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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: July 11, 2000, at 9:00 a.m.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 402, 407, and 457

RIN 0563–AB81

Catastrophic Risk Protection Endorsement; Regulations for the 1999 and Subsequent Reinsurance Years; Group Risk Plan of Insurance Regulations for the 2000 and Succeeding Crop Years, and the Common Crop Insurance Regulations; Basic Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Catastrophic Risk Protection Endorsement (7 CFR part 402), the Group Risk Plan of Insurance Regulations (7 CFR part 407), and the Common Crop Insurance Regulations, Basic Provisions (7 CFR part 457) to revise those provisions affected by the changes in the administrative fees and subsidies and the substitution of yields in the producer's actual production history mandated by the Agricultural Risk Protection Act of 2000.

EFFECTIVE DATE: This rule is effective June 28, 2000. Written comments and opinions on this rule will be accepted until the close of business August 29, 2000 and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO.

Comments titled ''Administrative Fees Due to Legislation'' may be sent via the Internet to DirectorPDD@rm.fcic.usda.gov. A copy of each response will be available for public inspection and copying from 7:00 a.m. to 4:30 p.m., CDT, Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: For further information and a copy of the Cost Benefit Analysis, contact Louise Narber, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, is subject to review by the Office of Management and Budget (OMB).

Cost Benefit Analysis

In accordance with section 6(a)(3)(D) of Executive Order 12866, the Office of Information and Regulatory Affairs, OMB, has been notified Congress has specified that the changes made by this rule are to be effective for the 2001 crop year and that to make this rule effective for the 2001 crop year fall planted crops, this rule must be published by the June 30, 2000, contract change date. A preliminary Cost-Benefit Analysis has been done and is available to interested parties at the Kansas City address above. In summary, the Cost Benefit Analysis found that the benefits provided outweigh associated costs. The crop insurance policy changes contained in this rule are required under the Agricultural Risk Protection Act of 2000. The analysis finds that the increases in the administrative fees for the catastrophic risk protection level of coverage from $60 per crop per county to $100 per crop per county, for additional coverage from $20 per crop per county to $30 per crop per county, and for limited coverage from $50 per crop per county, not to exceed $200 per county, and $600 for all counties, to $30 per crop per county with no limits may modestly increase the costs to producers but they will also reduce the overall costs of the program to taxpayers. The analysis also finds that giving producers the option of replacing certain yields in their actual production history (APH) with 60 percent of the transitional yield for the county will result in greater coverage for producers that have been hardest hit by disasters. Based on the cost benefit analysis and the requirements of the Agricultural Risk Protection Act of 2000, FCIC finds this regulation is in the best interest of the overall crop insurance program.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule has been designated by the Office of Information and Regulatory Affairs, OMB, as a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (Small Business Act). Pursuant to section 808(2), the Manager of FCIC has determined that there is good cause for making this rule effective less than 60 days after submission of the rule to each House of Congress and to the Comptroller General. Congress has specified that the changes made by this rule are to be effective for the 2001 crop year. To be effective for 2001 crop year fall planted crops, the changes must be effective by the June 30, 2000, contract change date. Failure to implement this rule by the June 30 contract change date will result in the disparate treatment of producers with 2001 crop year crops. Therefore, delay of the implementation of this rule to comply with the notice and public procedure requirements of the Small Business Act would be contrary to the public interest.

Paperwork Reduction Act of 1995

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information for this rule have been previously approved by OMB under control number 0563–0053 through April 30, 2001. The amendments set forth in this rule do not revise the content or alter the frequency of reporting for any of the forms or information collections cleared under the above-referenced docket.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the private sector.

Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

The provisions contained in this rule will not have a substantial direct effect on States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, consultation with the States is not required.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The regulation does not require any more action on the part of the small entities than is required on the part of large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

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

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

This interim rule implements the changes to the crop insurance policies mandated by the Agricultural Risk Protection Act of 2000. The Agricultural Risk Protection Act of 2000 requires the provisions to be implemented for the 2001 and subsequent crop years. Crop insurance policies with a contract change date prior to the effective date of this rule will not be affected by these provisions. Crop insurance policies with a contract change date on or after the effective date of this rule will receive insurance under the terms of their policy as revised by this rule. Since the changes to the policy made by this rule are required by statute, and the changes must be made by the June 30, 2000, contract change date to be fully implemented for the 2001 crop year, it is contrary to the public interest to publish this rule for notice and comment prior to making the rule effective. However, comments are solicited for 60 days after the date of publication in the **Federal Register** and will be considered by FCIC before this rule is made final.

1. FCIC amends the Catastrophic Risk Protection Endorsement to revise the definition of ''approved yield'' to allow for the substitution of 60 percent of the transitional yield, change the administrative fee from $60 to $100, revise the requirement that the producer pay the administrative fee, and remove all references to limited coverage because, as a result of changes to the subsidy levels and administrative fee, there is no longer a distinction between limited and additional coverage.

2. FCIC amends the Group Risk Plan of Insurance Basic Provisions to remove all references to limited coverage because, as a result of changes to the subsidy levels and administrative fee, there is no longer a distinction between limited and additional coverage; revise the definition of ''additional coverage'' to incorporate limited coverage; change the administrative fee from $60 to $100 for catastrophic risk protection coverage, remove all references to administrative fees for limited coverage, change the administrative fee from $20 to $30 for all coverages in excess of catastrophic risk protection; and revise the requirement that the producer pay the administrative fee.

3. FCIC amends the Common Crop Insurance Regulations, Basic Provisions to remove all references to limited coverage because, as a result of changes to the subsidy levels and administrative fee, there is no longer a distinction between limited and additional coverage; revise the definition of ''additional coverage'' to incorporate limited coverage and the definition of ''approved yield'' to allow for the substitution of 60 percent of the transitional yield; remove all references to administrative fees for limited coverage, and change the administrative fee from $20 to $30 for all coverages in excess of catastrophic risk protection; and revise the requirement that the producer pay the administrative fee.

List of Subjects in 7 CFR Parts 402, 407, and 457

Catastrophic risk protection endorsement, Insurance provisions.

Interim Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR parts 402, 407, and 457 as follows:

PART 402—CATASTROPHIC RISK PROTECTION ENDORSEMENT

1. The authority citation for 7 CFR part 402 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. Amend part 402 to revise the part heading as set forth above;

3. Amend § 402.4 as follows:

a. Revise the introductory text of the Catastrophic Risk Protection Endorsement;

b. Amend section 1 of the Catastrophic Risk Protection Endorsement by revising the definition of ''approved yield;''

c. Amend section 6 of the Catastrophic Risk Protection Endorsement to revise the introductory text of paragraph (b) and paragraph (b)(1);

d. Amend section 7(a) of the Catastrophic Risk Protection Endorsement by deleting the words ''limited or'' from the first and last sentence and removing the phrase ''unless the maximum administrative fee would be exceeded'' from the last sentence.

§ 402.4 Catastrophic Risk Protection Endorsement Provisions.

The Catastrophic Risk Protection Endorsement Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

1. Definitions

* * * * *

Approved yield. The amount of production per acre computed in accordance with FCIC's actual production history program (7 CFR part 400, subpart G) or for crops not included under 7 CFR part 400, subpart G, the yield used to determine the guarantee in accordance with the Crop Provisions or the Special Provisions, and any adjustments elected in

accordance with section 36 of the Basic Provisions.

* * * * *

6. Annual Premium and Administrative Fees

* * * * *

(b) In return for catastrophic risk protection coverage, you must pay an administrative fee to the insurance provider within 30 days after you have been billed by us, unless otherwise specified in 7 CFR part 400 (You will be billed by the date stated in the Special Provisions);

(1) The administrative fee owed is $100 for each crop in the county.

* * * * *

PART 407—GROUP RISK PLAN OF INSURANCE REGULATIONS FOR THE 2001 AND SUCCEEDING CROP YEARS

1. The authority citation for 7 CFR part 407 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. Amend part 407 to revise the part heading as set forth above;

3. Amend § 407.9 as follows:

a. Revise the introductory text;

b. Amend the seventh introductory paragraph of Group Risk Plan Common Policy by removing the words, ''limited or'';

c. Revise the definition of ''additional coverage'' in section 1 of the ''Group Risk Plan of Insurance Basic Provisions'';

d. Amend section 1 of the Group Risk Plan of Insurance Basic Provisions by removing the definition of ''limited coverage'';

e. Amend section 1 of the Group Risk Plan of Insurance Basic Provisions by removing the phrase ''as limited and maximum amounts per acre'' from the definition of ''subsidy'';

f. Amend section 4(a) of the Group Risk Plan of Insurance Basic Provisions by removing the words ''limited and'' from the second sentence.

g. Amend section 5(a) of the Group Risk Plan of Insurance Basic Provisions by removing the words ''limited and'' from the second sentence.

h. Revise the introductory text of section 8(a) and paragraph 8(a)(1) of the Group Risk Plan of Insurance Basic Provisions;

i. Revise sections 8(b) and (c) of the Group Risk Plan of Insurance Basic Provisions;

j. Amend section 8(d) of the Group Risk Plan of Insurance Basic Provisions by removing the words ''limited and'';

k. Amend section 8(e) of the Group Risk Plan of Insurance Basic Provisions by removing '', limited,''; and

l. Amend the example (after section 20 of the Group Risk Plan of Insurance Basic Provisions) by removing the last sentence of the first paragraph and the word ''limited'' from the second sentence of the third paragraph.

The revised paragraphs read as follows:

§ 407.9 Group risk plan common policy.

The provisions of the Group Risk Plan Common Policy for the 2001 and succeeding crop years are as follows:

* * * * *

Group Risk Plan of Insurance Basic Provisions

1. Definitions.

* * * * *

Additional coverage. For GRP, an amount of protection greater than catastrophic risk protection. The protection is on a per acre basis as specified in the actuarial documents for the crop, practice, and type.

* * * * *

8. Administrative Fees and Annual Premium

(a) If you obtain a catastrophic risk protection GRP policy, you will pay an administrative fee, unless otherwise specified in 7 CFR part 400:

(1) Of $100 per crop per county;

* * * * *

(b) If you obtain an additional coverage GRP policy, you will pay an administrative fee:

(1) Of $30 per crop per county;

(2) Payable to the insurance provider on the billing date for the crop.

(c) Limited resource farmers as defined in 7 CFR 457.8 may apply for a waiver of administrative fees.

* * * * *

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. Amend § 457.8 in the Common Crop Insurance Policy under Terms and Conditions, Basic Provisions to:

a. Revise the definitions of ''Additional coverage'' and ''Approved yield'' in section 1 of the Basic Provisions;

b. Amend section 1 of the Basic Provisions by deleting, ''limited,'' from the definition of ''administrative fee'';

c. Amend section 1 of the Basic Provisions by deleting the definition of ''Limited coverage'';

d. Amend section 2(i) of the Basic Provisions by deleting, '' limited,'';

e. Amend the introductory text of section 3(f) of the Basic Provisions by deleting, ''limited'';

f. Amend section 3(f)(1) of the Basic Provisions by removing ''a limited coverage policy'' and adding in its place ''an additional coverage policy'';

g. Amend section 3(f)(2) of the Basic Provisions by removing ''limited or'' (three times) and revising ''policies'' to read ''policy'';

h. Revise section 7(e)(1) of the Basic Provisions;

i. Remove sections 7(e)(2) and 7 (e)(6) of the Basic Provisions and redesignate paragraphs (e)(3) through (5) as (e)(2) through (4).

j. Amend redesignated section 7(e)(4) of the Basic Provisions by removing the phrase ''for limited coverage'';

k. Amend section 17(g) of the Basic Provisions by replacing ''a limited or'' with ''an''; and

l. Amend section 35(a) of the Basic Provisions by replacing ''a limited or'' with ''an''.

m. Add a new section 36 of the Basic Provisions.

The revised and added paragraphs read as follows:

§ 457.8 The application and policy.

* * * * *

Terms and Conditions

Basic Provisions

1. Definitions.

* * * * *

Additional coverage. A level of coverage greater than catastrophic risk protection.

* * * * *

Approved yield. The actual production history (APH) yield determined in accordance with 7 CFR part 400, subpart G, including any adjustments elected under section 36.

* * * * *

7. Annual Premium and Administrative Fees

* * * * *

(e) *–*–*

(1) You, unless otherwise authorized in 7 CFR part 400, must pay an administrative fee each crop year of $30 per crop per county for all levels of coverage in excess of catastrophic risk protection.

* * * * *

36. Substitution of Yields.

You may elect to exclude actual yields used to calculate the APH yield that are less than 60 percent of the applicable transitional yield (T-yield), as defined in 7 CFR 400.52. Each excluded actual yield will be replaced with a yield equal to 60 percent of the applicable T-yield for the county. The replacement yields will be used in the same manner as actual yields for the purpose of calculating the APH yield. Premium rates for approved yields that are adjusted under this section will be

based on the producer's yield prior to replacing the actual yields or such other basis as determined appropriate by FCIC.

Signed in Washington, D.C., on June 27, 2000.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 00–16583 Filed 6–28–00; 10:03 am]

BILLING CODE 3410–08–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 612 and 614

RIN 3052–AB95

Standards of Conduct; Loan Policies and Operations

AGENCY: Farm Credit Administration (FCA).

ACTION: Direct final rule with opportunity to comment.

SUMMARY: The FCA is rewriting its Standards of Conduct regulations in plain language so that they are easier to understand. This direct final rule does not change the requirements of the existing regulations.

DATES: Unless we receive significant adverse comment by July 31, 2000, these regulations will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. The FCA will publish a document in the **Federal Register** to establish the actual effective date. If we receive significant adverse comment on an amendment, paragraph, or section of this rule, and that provision can be addressed separately from the rest of the rule, we will withdraw that amendment, paragraph, or section and adopt as final those provisions of the rule that are not the subject of a significant adverse comment. In that case, we will tell you how we expect to continue with rulemaking on the provisions that were the subject of a significant adverse comment.

ADDRESSES: You may send comments by electronic mail to ''reg-comm@fca.gov'' or through the Pending Regulations section of our Web site at ''www.fca.gov.'' You may also send comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or by fax to (703) 734–5784. You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Dale Aultman, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Howard Rubin, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of our proposed amendment is to rewrite the Standards of Conduct regulations to make them easier for the Farm Credit System (System) to understand and to better explain our expectations for high standards of honesty and integrity. We are also amending one of our other regulations so it correctly references our Standards of Conduct regulations.

II. Background

A. Reasons for Plain Language

We are amending these regulations so you can read and understand them easily. We are guided by a Presidential memorandum dated June 1, 1998, requiring the Federal Government's writing to be in plain language. Eventually we will rewrite all of our regulations in plain language.

B. Public Comments

On August 18, 1998, we published a notice in the **Federal Register** that asked you to identify existing regulations and policies that impose unnecessary burdens on the System. *See* 63 FR 44176. We received comments from four Farm Credit banks, a jointly managed production credit association/Federal land credit association, and the Farm Credit Council on Standards of Conduct issues. Most of the commenters asked that we rewrite the Standards of Conduct regulations in plain language. This direct final rule addresses their request and clarifies our regulations. Director, officer, and employee requirements are now in individual subparts so those persons can find the regulations that apply to them more easily. In addition, we clarify our existing regulations stating that directors, officers, and employees may be subject to civil money penalties and suspensions if they violate their duties.

One Farm Credit Bank asked that we remove our prohibition against Farm Credit bank or agricultural credit bank (collectively, bank) officers also working at an association affiliated with that bank. We are not removing this prohibition because persons serving in a dual role may not be able to meet the goals and fiduciary duties of both the bank and association.

One bank asked that officers and employees be allowed to act as real estate agents and insurance sales agents when not working at the System institution. The bank did note that those employees must not be allowed to transact business with directors, other officers or employees, borrowers, or loan applicants. We are not removing these prohibitions because System institutions have a direct or indirect involvement in many real estate transactions and also sell insurance. This involvement could cause actual conflicts of interest. Even if there is not an actual conflict of interest, System institutions must avoid the appearance of a conflict of interest that could result if their officers or employees sold real estate or insurance.

Another bank asked that System employees without supervisory or decision-making authorities be exempt from disclosure requirements. The preamble to our Standards of Conduct rule published in the **Federal Register** on May 13, 1994, stated that System institution boards may exempt employees from disclosures when they have a substantial degree of supervision and a low level of responsibility. *See* 59 FR 24893. We have rewritten our regulation to include this guidance.

III. Direct Final Rule

We are amending these regulations by a direct final rulemaking. The Administrative Procedure Act, 5 U.S.C. 551–59, *et seq.* (APA), supports direct final rulemaking, which allows Federal agencies to enact noncontroversial regulations more quickly, without the usual notice and comment period. This process lets us develop, review, and publish a final rule quickly and gives the public an opportunity to comment or object.

In a direct final rulemaking, we tell you the rule will become effective on a specified date unless we receive significant adverse comment during the comment period. If we receive significant adverse comment on an amendment, paragraph, or section of this rule, and that provision can be addressed separately from the rest of the rule, we will withdraw that amendment, paragraph, or section and adopt as final those provisions of the rule that are not the subject of a significant adverse comment. In that case, we will tell you how we expect to continue with rulemaking on the provisions that were the subject of a significant adverse comment.

A significant adverse comment is one that explains why our rule would be inappropriate (including challenges to its underlying premise or approach), ineffective, or unacceptable without a change. In general, a significant adverse comment raises an issue serious enough to warrant a substantive response from us in a notice-and-comment rulemaking. For example, a significant adverse comment to this plain language revision would explain how we made a substantive change to, or otherwise misinterpreted, the existing requirements. Because this direct final rule does not change the existing requirements of this part, a comment regarding the existing requirements will not be considered a significant adverse comment.

Direct final rulemaking is justified under 5 U.S.C. 553(b)(B). Under 5 U.S.C. 553(b)(B), for ''good cause,'' we may omit notice and comment when ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' In a direct final rulemaking, an agency finds the rule is so straightforward and noncontroversial that normal notice and comment are unnecessary under the APA. However, rather than eliminating public comment altogether, which is permissible under 5 U.S.C. 553(b)(B), we are giving you an opportunity to disagree with our conclusion that public input on the rule is unnecessary.

For these regulations, we believe that a direct final rulemaking is proper, as we do not expect significant adverse comment. If we receive no significant adverse comment, we will publish our regular notice of the rule's effective date in compliance with section 5.17(c)(1) of the Farm Credit Act of 1971, as amended.

List of Subjects

12 CFR Part 612

Agriculture, Banks and banking, Conflict of interests, Rural areas.

12 CFR Part 614

Agriculture, Banks and banking, Flood Insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, parts 612 and 614 of chapter VI, title 12 of the Code of Federal Regulations are amended as follows:

PART 612—STANDARDS OF CONDUCT

1. Revise part 612 to read as follows:

Subpart A—General Provisions

Sec.

612.2000 What is the purpose of this part?
612.2005 Am I covered by this rule?
612.2010 Definitions.

Subpart B—Director Duties

612.2100 What are my responsibilities as a director?
612.2105 What are our responsibilities as a board of directors?
612.2110 As a director what must I disclose?
612.2115 What am I not permitted to do as a director?
612.2120 What rules am I subject to if I want to acquire property?
612.2125 What standards of conduct policies and procedures must our board of directors issue?
612.2130 May I own or buy System obligations?
612.2135 What happens if I violate my duties?

Subpart C—Officer and Employee Duties

612.2200 What are my responsibilities as an officer or employee?
612.2205 As an officer or employee what must I disclose?
612.2210 What am I not permitted to do as an officer or employee?
612.2215 May I act as an agent or broker for real estate or insurance?
612.2220 What rules am I subject to if I want to acquire property?
612.2225 What rules apply if I work for more than one System institution?
612.2230 May I own or buy System obligations?
612.2235 What happens if I violate my duties?

Subpart D—Standards of Conduct Official Duties

612.2300 What are my duties as a Standards of Conduct Official?
612.2305 What must I investigate as a Standards of Conduct Official?
612.2310 What must I report as a Standards of Conduct Official?

Subpart E—Standards of Conduct for Agents

612.2400 What are my duties as an agent?

Authority: Secs. 5.9, 5.17, 5.19, of the Farm Credit Act (12 U.S.C. 2243, 2252, 2254).

Subpart A—General Provisions

§ 612.2000 What is the purpose of this part?

This part contains the Farm Credit Administration's (FCA/we/our) expectations for high standards of honesty, integrity, impartiality, and conduct in the Farm Credit System (System) to maintain the public's confidence.

§ 612.2005 Am I covered by this rule?

You are covered by this rule if you are a director, officer, employee, agent, or Standards of Conduct Official of a System institution. The following section defines those persons and other terms that are used in this part.

§ 612.2010 Definitions.

For this part, the following terms apply:

(a) *Agent* means any person (other than a director, officer or employee) who is authorized to act for or represent a System institution. An agent includes a person such as a lawyer, accountant, or appraiser who provides professional services to a System institution.

(b) A *conflict of interest* or an appearance of a conflict of interest exists when you have a financial interest that actually affects, or appears to a reasonable person who knows the relevant facts to affect, your ability to perform official duties objectively and impartially in the best interest of your System institution. To determine whether you have a conflict of interest, the following interests are considered yours:

(1) Interests of your spouse;

(2) Interests of your minor children;

(3) Interests of your business partners;

(4) Interests of any organization or entity that you serve as officer, director, trustee, partner or employee; and

(5) Interests of any person, organization, or entity with which you are negotiating for, or have an arrangement for, prospective employment.

(c) *Control* of an entity means that you, directly, indirectly, or acting with others:

(1) Own 5 percent or more of the entity's equity;

(2) Own or have the power to vote 5 percent or more of any class of the entity's voting securities; or

(3) Have the power to exercise a controlling influence over the entity.

(d) *Director* means a member of a board of directors of a System institution.

(e) *Employee* means an individual (not including a director, officer, or agent) who works for, is paid by, and whose work performance is supervised by a System institution.

(f) *Entity* means a corporation, company, association, firm, joint venture, partnership (general or limited), society, joint stock company, trust, fund, or other organization or institution, except a System institution.

(g) *Family* means an individual and spouse and anyone having the following relationship to either: parent, child, sibling, stepparent, stepchild, stepsibling, half brother, half sister, uncle, aunt, nephew, niece, grandparent, grandchild, and their spouses.

(h) A *financial interest* means an interest in an activity, transaction, property, or relationship with a person or an entity that involves giving or

receiving something of present or deferred monetary value.

(i) *Financially obligated with* means that you are legally obligated for a debt of another person or entity or someone else is legally obligated for your debts. This includes co-signing or guaranteeing a debt for another person or entity or using your property as security for someone else's debt.

(j) A *material financial interest* means that you have a financial interest significant enough to:

(1) Actually affect your decision-making, or

(2) Cause a reasonable person who knows the relevant facts to question your ability to perform your official duties objectively, impartially, and in the best interest of your System institution.

(k) *Mineral interest* means any interest in minerals, oil, or gas, including, but not limited to, any right derived directly or indirectly from a mineral, oil, or gas lease, deed, or royalty conveyance.

(l) *Officer* means the chief executive officer, president, chief operating officer, vice president, secretary, treasurer, general counsel, chief financial officer, and chief credit officer of each System institution, and any person who holds a similar position of authority.

(m) *Ordinary course of business* means a transaction that is:

(1) Usual and customary based on the prior conduct of the persons involved in the transaction; or

(2) Made on terms and conditions comparable to those used by other persons in the same industry for similar transactions.

(n) *Person* means individual or entity.

(o) *Standards of Conduct Official* means the official designated under subpart D of this part.

(p) *System institution* and *institution* means any bank, association, service organization, or the Federal Farm Credit Banks Funding Corporation.

Subpart B—Director Duties

§ 612.2100 What are my responsibilities as a director?

(a) You must maintain high standards of honesty, integrity, impartiality, and conduct to ensure the proper performance of System business and continued public confidence in System institutions. You must avoid misconduct and conflicts of interest to maintain these standards.

(b) You must obey all applicable laws, regulations, policies, instructions, and procedures. You must exercise diligence and good judgment in carrying out your duties and responsibilities.

(c) You must ensure that other directors, officers, employees, and agents comply with this part and promptly address any matter involving a conflict of interest.

§ 612.2105 What are our responsibilities as a board of directors?

(a) You must ensure that your institution complies with all standards of conduct requirements. You must appoint a Standards of Conduct Official to carry out subpart D of this part. You may contract with your supervising bank to provide a Standards of Conduct Official.

(b) You must ensure that your institution uses safe and sound business practices with agents and that your institution:

(1) Selects qualified and reputable agents;

(2) Investigates and takes corrective action when an agent breaches his or her fiduciary duty;

(3) Avoids or controls the employment of agents who are related to your institution's directors, officers, or employees;

(4) Avoids or controls soliciting or accepting gifts or favors by agents; and

(5) Avoids or controls an agent's use of System or borrower information obtained in the course of the agent's dealings with System institutions.

(c) You must ensure your institution keeps all standards of conduct policies and procedures, reports, investigations, determinations, and evidence of compliance with this part for at least 6 years.

(d) You must establish periodic written disclosure requirements for directors, officers, and employees to effectively enforce this part and your institution's standards of conduct policy. You may exclude from these reporting requirements employees who have substantial supervision and low levels of responsibility.

§ 612.2110 As a director what must I disclose?

(a) Annually, and as required by paragraph (c) of this section, you must file a written and signed statement with your Standards of Conduct Official that discloses:

(1) The names of any immediate family members and affiliated organizations that did business with your institution during the past 12 months.

(i) *Immediate family* means a person and spouse and his or her parent, child, sibling, and their spouses.

(ii) *Affiliated organizations* include any organization, other than a System institution, for which you served as a partner, officer, or majority shareholder at any time during the past 12 months;

(2) Any legal proceedings required to be disclosed in the annual report to shareholders under § 620.5(k) of this chapter; and

(3) Any additional information your institution needs to make the disclosures required by part 620 of this chapter.

(b) At such intervals as your board determines is necessary to effectively enforce this part and your standards of conduct policy, you must file a written and signed statement with your Standards of Conduct Official that contains the disclosures required by our regulations and your institution's standards of conduct policy. At a minimum, you must disclose:

(1) The name of any family member, person living in your home, business partner, or any entity they or you control that does business with your institution, any association your institution supervises, or your supervising bank; and

(2) The name and the nature of any entity in which you have a material financial interest or on whose board you serve, if that entity does business with your institution, any association your institution supervises, or any of their borrowers.

(c) When you become or plan to become involved in any relationship, transaction, or activity that must be reported under this section or that could create a conflict of interest, you must promptly ask your Standards of Conduct Official, in writing, whether the relationship, transaction, or activity creates a conflict of interest.

(d) When you become a director you must make the disclosures required by this section to your Standards of Conduct Official within 30 days after your election or appointment. You need not do so if you completed a disclosure as a director candidate under part 620 of this chapter in the past 180 days.

§ 612.2115 What am I not permitted to do as a director?

(a) You must not participate (except for matters that affect borrowers and shareholders generally, such as interest rate determinations) in System matters or transactions that directly or indirectly affect:

(1) Your financial interest;

(2) The financial interest of an entity you control; or

(3) The financial interest of your family, any person living in your home, your business partner, or any entity they or you control.

(b) You must not divulge or use (except in your official duties) any

System information or document not generally available to the public that you acquire as a board member.

(c) You must not use your position to obtain or attempt to obtain special advantage or favoritism for any person, entity, or yourself.

(d) You must not use your position or information you acquire in your position to solicit or obtain, directly or indirectly, any gift, fee, compensation, or other benefit for any person, entity, or yourself.

(e) You must not accept, directly or indirectly, any gift, fee, compensation, or other benefit that is offered or could reasonably be viewed as offered to:

(1) Influence your actions as a director of a System institution, or

(2) Obtain information that you have access to because you are a board member.

(f) You must not borrow from, lend to, or become financially obligated with or for, directly or indirectly, a director, officer, employee, agent, borrower, or loan applicant of your institution, or a director, officer, employee, or agent of any association your institution supervises, or your supervising bank, unless:

(1) The transaction is with a family member or person living in your home; or

(2) The Standards of Conduct Official determines, under your institution's policies and procedures, the potential for conflict of interest is insignificant because:

(i) The transaction is in the ordinary course of business or does not involve a material financial interest; and

(ii) You do not participate in any matter affecting the financial interest of the other party to the transaction unless it is a matter that affects borrowers and shareholders generally.

(g) You must not violate your institution's standards of conduct policies and procedures.

§ 612.2120 What rules am I subject to if I want to acquire property?

(a) As a director, you may acquire an interest in real or personal property, including mineral interests, in which a System institution has an interest only if you meet these conditions:

(1) You acquire the property through public auction or similar open, competitive bidding;

(2) You did not participate in the decision to foreclose or dispose of the property including setting the sale terms; and

(3) In your position as a director, you have received no information as a result of your position that could give you an advantage over other potential bidders in making a successful bid.

(b) Even if you did not participate in the decision to foreclose or dispose of the property, as a director you may not acquire any real or personal property, including mineral interests, in a private transaction if:

(1) Your institution, any association your institution supervises, or your supervising bank, owned the property within the past 12 months; and

(2) The institution acquired the property by foreclosure or similar action.

§ 612.2125 What standards of conduct policies and procedures must our board of directors issue?

(a) Each board of directors must issue standards of conduct policies and procedures for directors, officers, and employees consistent with the purposes and specific requirements of this part.

(b) Your policies and procedures must, at a minimum:

(1) Address:

(i) Hiring of family members;

(ii) Political activity by directors, officers, and employees;

(iii) Devoting time to duty by directors, officers, and employees;

(iv) Giving or receiving gifts or favors by directors, officers, and employees; and

(v) Improper use of official property, position, or information.

(2) Outline the authorities and responsibilities of the Standards of Conduct Official;

(3) Set guidelines for directors, officers, and employees to follow in business relationships and transactions not specifically prohibited by this part that involve borrowers, loan applicants, or other persons doing business with your institution;

(4) If applicable, set guidelines for directors, officers, and employees to follow in business relationships and transactions not specifically prohibited by this part that involve directors, officers, or employees of:

(i) Your supervising bank, any association it supervises, or their borrowers or loan applicants; or

(ii) Other persons doing business with your supervising bank or any association it supervises;

(5) Set guidelines for deciding whether an officer or employee of your bank or association may serve as a director of a cooperative that borrows from another System institution. Before approving an officer's or employee's request, your board must decide whether the proposed service as a director may cause the officer or employee to violate any regulations in this part or your institution's policies and procedures;

(6) Establish conditions under which officers and employees may:

(i) Accept outside employment or compensation;

(ii) Borrow from System institutions;

(iii) Acquire an interest in real or personal property that secured a debt owed to a System institution within the preceding 12 months;

(iv) Buy real or personal property from a System institution;

(7) Ensure that your institution uses open competitive bidding when it sells surplus property above a stated value (as established by your board) to its officers or employees;

(8) Give new directors, officers, and employees a reasonable amount of time to end transactions, relationships, or activities that your policies and procedures prohibit;

(9) Give directors, officers, and employees a reasonable amount of time after you change existing policies and procedures to end transactions, relationships, or activities the new policies and procedures prohibit;

(10) Provide a procedure for directors, officers, or employees to recuse themselves from official action (including deliberations) on matters in which they may not participate under the regulations in this part or your policies and procedures;

(11) Ensure that compliance with standards of conduct decisions and board policy is adequately documented;

(12) Establish reporting requirements that enable your institution to comply with § 620.5 of this chapter;

(13) Establish a method to monitor conflicts of interest and compliance with your policies and procedures;

(14) Establish appeal procedures available to officers and employees to whom any required approval has been denied.

(15) If applicable, establish guidelines and prohibitions for bank for cooperatives and agricultural credit bank officers and employees involved with foreign exchange activities as required in § 614.4900(g) of this chapter.

§ 612.2130 May I own or buy System obligations?

(a) A director of a System institution other than the Federal Farm Credit Banks Funding Corporation (Funding Corporation) may only buy joint, consolidated, or Systemwide obligations that are both:

(1) Part of an offering available to the public, and (2) Bought in the secondary market or through a dealer or dealer bank affiliated with a member of the selling group designated by the Funding Corporation.

(b) A director of the Funding Corporation may not acquire, directly or

indirectly, any joint, consolidated, or Systemwide obligations, except by inheritance.

§ 612.2135 What happens if I violate my duties?

If you violate your duties, FCA may take action against you under 12 CFR part 622 of our regulations, and may impose civil money penalties and suspensions.

Subpart C—Officer and Employee Duties

§ 612.2200 What are my responsibilities as an officer or employee?

(a) You must uphold high standards of honesty, integrity, impartiality, and conduct to ensure the proper performance of System business and continued public confidence in the System and its institutions. You must avoid misconduct and conflicts of interest to maintain these standards.

(b) You must obey all applicable laws, regulations, policy statements, instructions, and procedures. You must exercise diligence and good judgment in carrying out your duties, obligations, and responsibilities.

§ 612.2205 As an officer or employee what must I disclose?

(a) Annually, and as required by paragraph (c) of this section, officers must file a written and signed statement with their Standards of Conduct Official that discloses:

(1) The names of any immediate family members and affiliated organizations who did business with their institution during the past 12 months.

(i) *Immediate family* means a person and spouse and his or her parent, child, sibling, and their spouses.

(ii) *Affiliated organizations* include any organization, other than a Farm Credit organization, for which you served as a partner, officer, or majority shareholder at any time during the past 12 months;

(2) Any legal proceedings required to be disclosed in the annual report to shareholders under § 620.5(k) of this chapter; and

(3) Any additional information your institution needs to make the disclosures required by part 620 of this chapter.

(b) At such intervals as an officer's and employee's board determines is necessary to effectively enforce this part and their institution's standards of conduct policy, officers and employees must file a written and signed statement with their Standards of Conduct Official that contains the disclosures required by our regulations and their institution's standards of conduct policy, unless their board excludes their positions from these reporting requirements. At a minimum, as an officer or employee you must disclose:

(1) The name of any family member, person living in your home, business partner, or any entity they or you control that does business with your institution, any association your institution supervises, or your supervising bank; and

(2) The name and the nature of any entity in which you have a material financial interest or on whose board you serve if that entity does business with your institution, any association your institution supervises, or any of their borrowers.

(c) If officers or employees become involved in any relationship, transaction, or activity that must be reported under this section or that could create a conflict of interest, they must promptly ask their Standards of Conduct Official, in writing, whether the relationship, transaction, or activity creates a conflict of interest.

(d) When you are hired as an officer or employee, you must make the disclosures required by this section to your Standards of Conduct Official within 30 days of accepting an offer for employment.

§ 612.2210 What am I not permitted to do as an officer or employee?

(a) You must not participate (except for matters that affect borrowers and shareholders generally, such as interest rate determinations) in System matters or transactions that directly or indirectly affect:

(1) Your financial interest;

(2) The financial interest of an entity you control; or

(3) The financial interest of your family, any person living in your home, your business partner, or any entity they or you control.

(b) You must not divulge or use (except in performing your official duties) any System information or document not generally available to the public that you acquire as a System officer or employee.

(c) You must not use your position to obtain or attempt to obtain special advantage or favoritism for any person, entity, or yourself.

(d) You must not use your position or information you acquire in your position to solicit or obtain, directly or indirectly, any gift, fee, compensation, or other benefit for any person, entity, or yourself.

(e) You must not accept, directly or indirectly, any gift, fee, compensation, or other benefit that is offered or could reasonably be viewed as offered to:

(1) Influence your actions as an officer or employee; or

(2) Obtain information that you have access to because you are an officer or employee.

(f) You must not borrow from, lend to, or become financially obligated with or for, directly or indirectly, a director, officer, employee, agent, borrower, or loan applicant of your institution, or a director, officer, employee, or agent of any association your institution supervises, or your supervising bank, unless:

(1) The transaction is with a family member or person living in your home; or

(2) The Standards of Conduct Official determines, according to your institution's policies and procedures, the potential for a conflict of interest is insignificant because:

(i) The transaction is in the ordinary course of business and does not involve a material financial interest; and

(ii) You do not participate in any matter affecting the financial interest of the other party to the transaction unless it is a matter that affects borrowers and shareholders generally.

(g) You must not violate your institution's policies and procedures governing standards of conduct.

§ 612.2215 May I act as an agent or broker for real estate or insurance?

(a) You may not act as a real estate agent or broker unless you are buying or selling real estate for your own use or for a family member or a person living in your home.

(b) You may not act as an agent or broker for the sale or placement of insurance unless authorized under section 4.29 of the Act.

§ 612.2220 What rules am I subject to if I want to acquire property?

You may not acquire, directly or indirectly, (except by inheritance) any interest in any real or personal property, including mineral interests, that your institution, the associations your institution supervises, or your supervising bank owned within the preceding 12 months as a result of foreclosure or similar action.

§ 612.2225 What rules apply if I work for more than one System institution?

(a) A bank officer may not be an officer or employee of a supervised association.

(b) A bank employee may not be an officer of a supervised association.

(c) You may be an employee at both a bank and a supervised association. Employee expenses must be appropriately reflected in each institution's financial statements.

(d) You may not serve as an officer or director of an entity that transacts business with any System institution in your institution's territory or any commercial bank, thrift institution, or other non-System financial institution in your institution's territory, except employee credit unions. For purposes of this section, ''transacts business'' does not include System institution loans to a family-owned entity, service on the board of directors of the Federal Agricultural Mortgage Corporation, or transactions with nonprofit entities or entities in which the System institution has an ownership interest.

(e) If you are an officer or employee of a bank or association you may serve as a director of a cooperative that borrows from another System institution only after approval of your board, subject to your institution's policies and procedures.

§ 612.2230 May I own or buy System obligations?

(a) If you are an officer or employee of a System institution other than the Federal Farm Credit Banks Funding Corporation (Funding Corporation) you may only buy joint, consolidated, or Systemwide obligations that are both:

(1) Part of an offering available to the public, and

(2) Bought in the secondary market or through a dealer or dealer bank affiliated with a member of the selling group designated by the Funding Corporation.

(b) If you are an officer or employee of the Funding Corporation you may not acquire, directly or indirectly, any joint, consolidated, or Systemwide obligations, except by inheritance.

§ 612.2235 What happens if I violate my duties?

If you violate your duties, FCA may take action against you under 12 CFR part 622 of our regulations, and may impose civil money penalties and suspensions.

Subpart D—Standards of Conduct Official Duties

§ 612.2300 What are my duties as a Standards of Conduct Official?

As a Standards of Conduct Official you:

(a) Advise directors, director candidates, officers, and employees about this part;

(b) Receive reports required by this part;

(c) Make determinations required by this part;

(d) Maintain records of your actions; and

(e) Investigate as directed by your board.

§ 612.2305 What must I investigate as a Standards of Conduct Official?

As a Standards of Conduct Official you must investigate or ensure investigation of all:

(a) Possible director, officer, employee, or agent violations of criminal statutes;

(b) Possible violations of this part or your institution's policies and procedures;

(c) Complaints against directors, officers, and employees; and

(d) Activities or suspected activities that could affect continued public confidence in the System.

§ 612.2310 What must I report as a Standards of Conduct Official?

(a) As a Standards of Conduct Official you must promptly report to your board and our Office of General Counsel:

(1) Any preliminary investigation that shows a director, officer, employee, or agent may have violated a criminal statute;

(2) The removal of a director or agent or discharge of an officer or employee as a result of an investigation; and

(3) Any matter that may have an adverse impact on continued public confidence in the System or any of its institutions.

(b) You must periodically report to your board on other significant matters you handle as a Standards of Conduct Official.

Subpart E—Standards of Conduct for Agents

§ 612.2400 What are my duties as an agent?

You must maintain high standards of honesty, integrity, and impartiality to ensure proper performance of System business and continued public confidence in the System. You must avoid misconduct and conflicts of interest.

PART 614—LOAN POLICIES AND OPERATIONS

2. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart L—Actions on Applications; Review of Credit Decisions

§ 614.4440 [Amended]

3. Amend § 614.4440(f) by removing '', subpart B'' in the last sentence.

Dated: June 19, 2000.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 00–16054 Filed 6–29–00; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 997

[No. 2000–15]

RIN 3069–AA92

Determination of Appropriate Present-Value Factors Associated With Payments Made by the Federal Home Loan Banks to the Resolution Funding Corporation; Correction

AGENCY: Federal Housing Finance Board.

ACTION: Final rule; correction.

SUMMARY: The Federal Housing Finance Board (Finance Board) published in the **Federal Register** of April 3, 2000, a final rule implementing provisions of the Gramm-Leach-Bliley Act (Gramm-Leach-Bliley) that changed the methodology for determining the amount of the payments to be made by the Federal Home Loan Banks (Banks) to the Resolution Funding Corporation (REFCORP). The final rule omitted a reference to the value of an annuity, as referenced in Gramm-Leach-Bliley, in one section of the rule. This document corrects that omission.

EFFECTIVE DATES: Effective on June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas E. Joseph, Attorney-Advisor, (202) 408–2512, *josepht@fhfb.gov,* or by regular mail at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. A telecommunication device for deaf persons (TDD) is available at (202) 408–2579.

SUPPLEMENTARY INFORMATION:

Need for Correction

In FR Doc. 00–8116, published in the **Federal Register** on April 3, 2000 (65 FR 17435), the Finance Board added new

part 997 to its regulations to implement provisions of Gramm-Leach-Bliley, Pub. L. No. 106–102, 113 Stat. 1338, 1455–56 (Nov. 12, 1999) related to adjustments in the end-date for the statutorily required annual payments made by the Banks to REFCORP. In § 997.5 of this new part, the annual value of the annuity referenced in section 607 of Gramm-Leach-Bliley was inadvertently omitted. To avoid any confusion as to the meaning of the rule, this correction adds the relevant value to the final rule.

Correction of Publication

For the reasons set forth above, the Finance Board hereby corrects FR Doc. 00–8116, published in the **Federal Register** on April 3, 2000 (65 FR 17435) as follows.

§ 997.5 [Corrected]

1. On page 17438, in the third column, add to § 997.5, paragraph (a), line 8, the phrase ''of $300 million per year'' after the word ''annuity.''

Dated: June 22, 2000.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–16543 Filed 6–29–00; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–12]

Establishment of Class D Airspace; Stuart, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace at Stuart, FL. Air traffic controllers at Witham Field in Stuart, FL, will be certificated weather observers by October 5, 2000. Therefore, the airport will meet criteria for Class D airspace on October 5, 2000. Class D surface area airspace is required when the control tower is open to accommodate current Standard Instrument Approach Procedures (SIAPs) and for Instrument Flight Rules (IFR) operations at the airport. This section establishes Class D airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of the Witham Field Airport.

EFFECTIVE DATE: 0901 UTC, October 5, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On May 5, 2000, the FAA proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class D airspace at Stuart, FL (65 FR 26154). Designations for Class D airspace extending upward from the surface of the earth are published in FAA Order 7400.9G, dated September, 1, 1999, and effective September 16, 1999, which is incorporated by reference by 14 CFR part 71.1. The Class D designations listed in this document will be published subsequently in the Order.

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

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class D airspace at Key West NAS.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400 9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO FL D Stuart, FL [New]

Witham Field Airport, FL
(Lat. 27°10′54″N, long. 80°13′16″W)

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

* * * * *

Issued in College Park, Georgia, on June 22, 2000.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–16660 Filed 6–29–00; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

RIN 0960–AE77

Denial of Supplemental Security Income (SSI) Benefits for Fugitive Felons and Probation and Parole Violators

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: These final regulations change our rules to reflect an amendment to the Social Security Act (the Act) made by Public Law (Pub. L.) 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The amendment prohibits payment of SSI benefits to certain fugitives and probation and parole violators.

EFFECTIVE DATE: These final regulations are effective July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Teresa Robinson, Social Insurance Specialist, Social Security Administration, Office of Program Benefits, 3–R–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–7960 or TTY (410) 966–5609. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION:

Background

Section 202(a) of Pub. L. 104–193 added section 1611(e)(5) of the Act to preclude eligibility for SSI benefits for certain fugitives and probation and parole violators. In general, section 1611(e)(5) of the Act provides that a person shall not be considered an eligible individual or eligible spouse for purposes of the SSI program for any month during which the person is—

- Fleeing to avoid prosecution for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State);
- Fleeing to avoid custody or confinement after conviction for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State); or
- Violating a condition of probation or parole imposed under Federal or State law.

Section 1611(e)(5) of the Act was effective on August 22, 1996, the date of the enactment of Pub. L. 104–193, and applies with respect to eligibility for SSI benefits for months beginning in August 1996.

Explanation of Final Regulations

These final rules amend our regulations for the SSI program to indicate that a person will not be eligible for SSI benefits under the circumstances described in section 1611(e)(5) of the Act. They make changes to our regulations in subparts B, G, and M of 20 CFR part 416 to implement section 202(a) of Pub. L. 104–193.

Subpart B explains the general rules that we apply in determining a person's eligibility for SSI benefits. In general, a person may be eligible for SSI benefits if he or she is a resident of the United States, has limited income and resources, and is age 65 or older, blind, or disabled.

Section 416.202 of subpart B lists the basic requirements which must be met in order for a person to be eligible for SSI benefits. We are amending § 416.202 to state that, in order to be eligible for SSI benefits, a person must not be—

(1) Fleeing to avoid prosecution for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State);

(2) Fleeing to avoid custody or confinement after conviction for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State); or

(3) Violating a condition of probation or parole imposed under Federal or State law.

To make this change, we are redesignating existing paragraph (f) of § 416.202 as paragraph (g) and adding a new paragraph (f) which would contain the provisions described above.

Our regulations in subpart G of part 416 require an SSI recipient, a representative payee of an SSI recipient, or an applicant for SSI benefits to report events that may affect eligibility or continued eligibility for SSI benefits or the amount of benefits. The regulations explain that a failure to make a timely report of such an event may result in the assessment of a penalty deduction against an individual's benefits.

We recognize that many SSI applicants do not report their status under section 1611(e)(5) of the Act to us. Thus, we will not depend on the reports of the individual recipient or applicant for information that he or she is fleeing prosecution, custody or confinement or violating a condition of probation or parole. We will seek law enforcement information in determining whether someone is ineligible under this provision. Our principal source will be records of Federal and State law enforcement agencies and penal institutions, but we will continue to explore all avenues of information which will help us decide whether individuals are ineligible, particularly under the provisions of section 1611(e)(5) of the Act.

Even though we will not be considering claimants as a primary source of information regarding their status under section 1615(e)(5), it is important to include this self-reporting requirement in the regulations for purposes of imposing monetary penalties under the Act. Section 416.708 of subpart G describes events which must be reported by an individual receiving SSI benefits, a representative payee for an SSI recipient, or an applicant awaiting a final decision on an application for SSI benefits. We are amending § 416.708 by adding a new paragraph (o) to provide that an individual must report to us that he or she is fleeing to avoid prosecution for a crime, fleeing to avoid custody or confinement after conviction for a crime, or violating a condition of probation or parole, in the circumstances described in section 1611(e)(5) of the Act.

Subpart M of part 416 provides rules for suspending or terminating an individual's SSI benefit payments when he or she no longer meets the requirements for eligibility for SSI benefits. We are adding new § 416.1339 to this subpart to explain the requirement to suspend payments when an SSI recipient is found to be an individual who falls under one of the provisions of section 1611(e)(5) of the Act.

Section 416.1339 provides that suspension of benefit payments because an individual is a fugitive or a probation or parole violator, as described above, is effective with the first day of whichever of the following months is earlier—

- The month in which a warrant or order for the individual's arrest or apprehension, an order requiring the individual's appearance before a court or other appropriate tribunal (*e.g.*, a parole board), or a similar order is issued by a court or other duly authorized tribunal on the basis of an appropriate finding that the individual—

(1) Is fleeing, or has fled, to avoid prosecution for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State);

(2) Is fleeing, or has fled, to avoid custody or confinement after conviction for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State); or

(3) Is violating, or has violated, a condition of his or her probation or parole imposed under Federal or State law; or

- The first month during which the individual fled to avoid such prosecution, fled to avoid such custody

or confinement after conviction, or violated a condition of his or her probation or parole, if indicated in such warrant or order, or in a decision by a court or other appropriate tribunal.

Section 416.1339 explains that an individual will not be considered to be ineligible for SSI benefits and benefit payments will not be suspended under the provisions of that section for any month prior to August 1996.

Section 416.1339 also explains that benefits will be resumed, if otherwise payable, effective with the first month throughout which the individual is determined to be no longer fleeing to avoid such prosecution, fleeing to avoid such custody or confinement after conviction, or violating a condition of his or her probation or parole.

We are also amending the second sentence of § 416.1337(b)(3)(ii) which contains a cross-reference to the sections of subpart M which describe conditions under which SSI benefits are suspended. We are revising the cross-reference to include a reference to new § 416.1339.

Comments on Notice of Proposed Rulemaking (NPRM)

On June 12, 1998, we published an NPRM in the **Federal Register** at 63 FR 32161 proposing to change our rules to prohibit payment of SSI benefits to certain fugitives and probation and parole violators. Interested parties were invited to participate in this rulemaking proceeding and were afforded 60 days within which to submit written comments on the proposal to SSA. We received two letters with public comments. Following are summaries of these comments and our responses to them.

Comment: One commenter said that he interprets ''fleeing to avoid prosecution for a crime'' to mean that the person fleeing has been indicted for a criminal act. He questions whether, absent an indictment, one can truly say that an individual is fleeing prosecution for a crime.

Response: While we understand the points raised by the commenter, we do not agree with this interpretation of the statute. Prosecution of an individual includes all steps necessary to reach a judicial determination of guilt or innocence beginning the day the information, criminal complaint or petition is filed with the proper authorities and a warrant is issued. This occurs when law enforcement personnel present evidence to a judge or magistrate that convinces him or her that it is reasonably likely that a crime has taken place and that the individual is criminally responsible for that crime. In these cases, the judge or magistrate issues a warrant for the individual's arrest. For an individual to be indicted, an accusation must be found and presented to the court by a grand jury. Because there are situations in which individuals are prosecuted without indictment, it would be contrary to statute to adopt this suggestion.

Comment: This same commenter points out that the proposed regulations fail to say whether or not an individual must be aware that he or she has been indicted for an alleged criminal act.

Response: We have no way of determining whether or not an individual is aware that he or she is wanted for a criminal offense and is knowingly fleeing from prosecution. We must rely on official reports and other similar determinations from various law enforcement agencies that an individual is fleeing to avoid prosecution.

Comment: This commenter also suggested that we further define ''violating a condition of probation or parole imposed under Federal or State law,'' to exclude minor infractions such as missing an appointment with a parole officer. The commenter feels that unless an individual has been adjudicated by a State or by the Federal government to be in violation of probation or parole, SSA has no basis for discontinuing or denying benefits.

Response: As we state in § 416.1339(b) of these final rules, SSI payments will be stopped when a court or other authorized tribunal finds that the individual is violating, or has violated, a condition of his or her probation or parole and the court has either: issued an order for the individual's arrest or apprehension, or issued an order requiring the individual's appearance before a court or other tribunal. Of course, individuals may dispute a finding that they are in violation of their probation or parole with the reporting agency.

Comment: In addition to the above comments, the commenter expressed concern about the overly strict implementation of this statute and the impact it will have on petty criminals. He cited an example of an individual who moved to a different State ten years ago, thereby violating a condition of his parole commitment. The originating crime was not violent in nature and the State with jurisdiction of the parole order does not seek to have him returned. The commenter indicates that this example should not be covered under this provision of the law.

Response: We disagree with the commenter's interpretation of the statute. Section 1611(e)(5) of the Act prohibits SSI benefits to any person who is violating a condition of probation or parole imposed under Federal or State law. Congress did not provide exceptions to this rule based on the nature of the originating crime or the State's reluctance to extradite the individual. We believe this legislation was passed to purposely prohibit the expenditure of Federal funds to aid those who are violating the law. However, as we explained earlier, we will not suspend an individual's SSI benefit until a court or other authorized tribunal determines that his or her parole has been violated, and has issued an official document.

Comment: The other commenter pointed out what he sees as redundancy in the phrase ''crime, or an attempt to commit a crime, which is a felony.'' He makes the argument that ''an attempt to commit a crime'' actually is a crime. In this commenter's opinion, the phrase ''or an attempt to commit a crime'' is illogical and confusing and should be omitted.

Response: To adopt this position, we must presume that Congress intended that the crime itself and the crime of attempting to commit a crime both be of felony-level severity. Under this interpretation, we agree that the phrase ''attempt to commit a crime'' would be rendered meaningless. However, we are required to give effect to all the language of the statute. We believe that the wording of section 1611(e)(5) and its legislative history support our position that Congress intended that the crime the individual attempts to commit must be a felony, but the crime of attempting to commit that crime does not necessarily have to be. Therefore, the omission of the phrase ''or an attempt to commit a crime'' would not accurately reflect the congressional intent in our final rules, and its inclusion is not redundant.

For the reasons discussed above, we have not changed the text of the proposed rules to reflect the public comments. However, we have made one minor technical correction to § 416.1337 to change the word ''him'' to say ''him or her''. Other than this one minor technical change, we are publishing the proposed regulations unchanged as final regulations.

Regulatory Procedures

Executive Order 12866

These final rules have been reviewed by the Office of Management and Budget (OMB) under the provisions of Executive Order 12866.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities because these rules affect only individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, as amended by Pub. L. 104–121, is not required.

Paperwork Reduction Act

These final rules contain a reporting requirement in § 416.708(o). As required by 44 U.S.C. 3507, as amended by section 2 of the Paperwork Reduction Act of 1995, we submitted a copy of these rules to OMB for its review and OMB has approved the reporting requirement under OMB No. 0960–0617.

The information collected will be used by SSA to deny eligibility for SSI benefits or to suspend SSI benefit payments to individuals who flee to avoid prosecution, or custody or confinement after conviction, or who violate a condition of probation or parole. The respondents are SSI applicants, recipients or representative payees. We estimate that the reporting burden will be 1 minute per response for 1,000 respondents, resulting in 16.7 annual burden hours. This includes the time it will take to read any instructions and provide the information.

(Catalog of Federal Domestic Assistance Program No 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

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

Dated: April 14, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set out in the preamble, subparts B, G, and M of part 416 of chapter III of title 20 of the Code of Federal Regulations are amended as follows:

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

Subpart B—[Amended]

1. The authority citation for subpart B of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1110(b), 1602, 1611, 1614, 1615(c), 1619(a), 1631, and 1634 of the Social Security Act (42 U.S.C. 902(a)(5), 1310(b), 1381a, 1382, 1382c, 1382d(c), 1382h(a), 1383, and 1383c); secs. 211 and 212, Pub. L. 93–66, 87 Stat. 154 and 155 (42 U.S.C. 1382 note); sec. 502(a), Pub. L. 94–241, 90 Stat. 268 (48 U.S.C. 1681 note); sec. 2, Pub. L. 99–643, 100 Stat. 3574 (42 U.S.C. 1382h note).

2. Section 416.202 is amended by redesignating paragraph (f) as paragraph (g) and by adding a new paragraph (f) to read as follows:

§ 416.202 Who may get SSI benefits.

* * * * *

(f) You are not—

(1) Fleeing to avoid prosecution for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which you flee (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State);

(2) Fleeing to avoid custody or confinement after conviction for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which you flee (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State); or

(3) Violating a condition of probation or parole imposed under Federal or State law.

* * * * *

Subpart G—[Amended]

3. The authority citation for subpart G of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1612, 1613, 1614, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382a, 1382b, 1382c, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

4. Section 416.708 is amended by adding a new paragraph (o) to read as follows:

§ 416.708 What you must report.

* * * * *

(o) *Fleeing to avoid criminal prosecution or custody or confinement after conviction, or violating probation or parole.* You must report to us that you are—

(1) Fleeing to avoid prosecution for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which you flee (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State);

(2) Fleeing to avoid custody or confinement after conviction for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which you flee (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State); or

(3) Violating a condition of probation or parole imposed under Federal or State law.

Subpart M—[Amended]

5. The authority citation for subpart M of part 416 continues to read as follows:

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

6. In § 416.1337, the second sentence of paragraph (b)(3)(ii) is revised to read as follows:

§ 416.1337 Exceptions to the continuation of previously established payment level.

* * * * *

(b) * * *

(3) * * *

(ii) * * * However, if the individual's benefits had been correctly suspended as provided in §§ 416.1321 through 416.1330 or § 416.1339 and they should have remained suspended but a benefit that exceeded the dollar limitation was paid, no further payment shall be made to him or her at this time and notice of the planned action shall not contain any provision regarding continuation of payment pending appeal. * * *

* * * * *

7. Section 416.1339 is added to read as follows:

§ 416.1339 Suspension due to flight to avoid criminal prosecution or custody or confinement after conviction, or due to violation of probation or parole.

(a) *Basis for suspension.* An individual is ineligible for SSI benefits for any month during which he or she is—

(1) Fleeing to avoid prosecution for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State); or

(2) Fleeing to avoid custody or confinement after conviction for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees (or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that State); or

(3) Violating a condition of probation or parole imposed under Federal or State law.

(b) *Suspension effective date.* (1) Suspension of benefit payments because an individual is a fugitive as described in paragraph (a)(1) or (a)(2) of this section or a probation or parole violator as described in paragraph (a)(3) of this section is effective with the first day of

whichever of the following months is earlier—

(i) The month in which a warrant or order for the individual's arrest or apprehension, an order requiring the individual's appearance before a court or other appropriate tribunal (*e.g.,* a parole board), or similar order is issued by a court or other duly authorized tribunal on the basis of an appropriate finding that the individual—

(A) Is fleeing, or has fled, to avoid prosecution as described in paragraph (a)(1) of this section;

(B) Is fleeing, or has fled, to avoid custody or confinement after conviction as described in paragraph (a)(2) of this section;

(C) Is violating, or has violated, a condition of his or her probation or parole as described in paragraph (a)(3) of this section; or

(ii) The first month during which the individual fled to avoid such prosecution, fled to avoid such custody or confinement after conviction, or violated a condition of his or her probation or parole, if indicated in such warrant or order, or in a decision by a court or other appropriate tribunal.

(2) An individual will not be considered to be ineligible for SSI benefits and benefit payments will not be suspended under this section for any month prior to August 1996.

(c) *Resumption of payments.* If benefits are otherwise payable, they will be resumed effective with the first month throughout which the individual is determined to be no longer fleeing to avoid such prosecution, fleeing to avoid such custody or confinement after conviction, or violating a condition of his or her probation or parole.

[FR Doc. 00–16553 Filed 6–29–00; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket Nos. 94F–0185 and 95F–0111]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 1,3-dihalo-5,5-dimethylhydantoin (where the dihalo (halogen) may be bromine and/or chlorine) that may contain no more than 20 weight percent 1,3-dihalo-5-ethyl-5-methylhydantoin (where the dihalo (halogen) may be bromine and/or chlorine), as a slimicide in the manufacture of paper and paperboard intended to contact food. This action is in response to petitions filed by Great Lakes Chemical Corp. and Lonza, Inc.

DATES: This rule is is effective June 30, 2000. Submit written objections and requests for a hearing by July 31, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vivian M. Gilliam, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3094.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 14, 1994 (59 FR 30595), FDA announced that a food additive petition (FAP 4B4418) had been filed by Great Lakes Chemical Corp., P.O. Box 2200, West Lafayette, IN 47906–0200. The company is currently represented by Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The Great Lakes petition proposed to amend the food additive regulations in § 176.300 *Slimicides* (21 CFR 176.300) to provide for the safe use of 1-bromo-3-chloro-5,5-dimethylhydantoin (CAS Reg. No. 16079–88–2) as a slimicide in the manufacture of paper and paperboard intended to contact food.

Thereafter, in a notice published in the **Federal Register** of June 14, 1995 (60 FR 31319), FDA announced that a food additive petition (FAP 3B4382) had been filed by Lonza, Inc., c/o Delta Analytical Corp., 7910 Woodmont Ave., Bethesda, MD 20814. Lonza, Inc., is currently represented by Lewis and Harrison, 122 C St. NW., suite 740, Washington, DC 20001. The Lonza petition proposed to amend the food additive regulations in § 176.300 to provide for the safe use of a mixture of 1-bromo-3-chloro-5,5-dimethylhydantoin, 1,3-dichloro-5,5-dimethylhydantoin, and 1,3-dichloro-5-ethyl-5-methylhydantoin as a slimicide in the manufacture of paper and paperboard intended to contact food.

In the filing notice for FAP 4B4418, the additive was identified as 1-bromo-3-chloro-5,5-dimethylhydantoin (CAS Reg. No. 16079–88–2). This nomenclature and this CAS Reg. No. apply to a single discrete substance; however, the additive is actually an equilibrium isomeric mixture of halogenated 5,5-dimethylhydantoin species. Subsequent to the filing of the petition, Great Lakes Chemical Corp. and FDA agreed that the additive is more appropriately identified as 1,3-dihalo-5,5-dimethylhydantoin (where the dihalo (halogen) may be bromine and/or chlorine).

In the filing notice for FAP 3B4382, the additive was identified as a mixture of 1-bromo-3-chloro-5,5-dimethylhydantoin and 1,3-dichloro-5,5-dimethylhydantoin and 1,3-dichloro-5-ethyl-5-methylhydantoin. However, the additive is actually an equilibrium isomeric mixture of halogenated 5,5-dimethylhydantoin and 5-ethyl-5-methyl hydantoin species. Lonza, Inc., and FDA agreed that the additive is more appropriately identified as 1,3-dihalo-5,5-dimethylhydantoin (where the dihalo (halogen) may be bromine and/or chlorine) that may contain no more than 20 weight percent 1,3-dihalo-5-ethyl-5-methylhydantoin (where the dihalo (dihalo (halogen) may be bromine and/or chlorine). This description includes the use proposed by both Great Lakes Chemical Corp. and Lonza, Inc. Therefore, this final rule responds to both petitions.

FDA has evaluated data in the petitions and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive, 1,3-dihalo-5,5-dimethylhydantoin (where the dihalo (halogen) may be bromine and/or chlorine) that may contain no more than 20 weight percent 1,3-dihalo-5-ethyl-5-methylhydantoin (where the dihalo (halogen) may be bromine and/or chlorine), as a slimicide in the manufacture of paper and paperboard intended to contact food is safe; (2) the additive will achieve its intended technical effect; and therefore, (3) the regulations in § 176.300 should be amended as set forth below.

The additive, 1,3–dihalo-5,5-dimethylhydantoin (where the dihalo (halogen) may be bromine and/or chlorine) that may contain no more than 20 weight percent 1,3-dihalo-5-ethyl-5-methylhydantoin (where the dihalo (halogen) may be bromine and/or chlorine) intended for use as a slimicide in the manufacture of paper and paperboard intended to contact food is regulated under section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348) as a food additive and not as a pesticide chemical under section 408 of the act (21 U.S.C. 346a). However, this intended use of 1,3-dihalo-5,5-dimethylhydantoin (where the dihalo (halogen) may be

bromine and/or chlorine) that may contain no more than 20 weight percent 1,3-dihalo-5-ethyl-5-methylhydantoin (where the dihalo (halogen) may be bromine and/or chlorine) may, nevertheless, be subject to regulation as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Therefore, manufacturers intending to use food-contact articles containing 1,3-dihalo-5,5-dimethylhydantoin (where the dihalo (halogen) may be bromine and/or chlorine) that may contain no more than 20 weight percent 1,3-dihalo-5-ethyl-5-methylhydantoin (where the dihalo (halogen) may be bromine and/or chlorine) as a slimicide in the manufacture of paper and paperboard intended to contact food should contact the Environmental Protection Agency to determine whether this use requires a pesticide registration under FIFRA.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petitions and the documents that FDA considered and relied upon in reaching its decision to approve the petitions are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

When both petitions were filed, they each contained an environmental assessment (EA). In the respective notices of filing, the agency announced that it was placing the EA's on display at the Dockets Management Branch for public review and comment. No comments were received on either EA. In addition, prior to completing our review of the EA submitted in FAP 3B4382, Lonza, Inc., submitted a claim of categorical exclusion under 21 CFR 25.32(q).

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that this action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by July 31, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 346, 348, 379e.

2. Section 176.300 is amended in the table in paragraph (c) by alphabetically adding an entry under the headings ''List of substances'' and ''Limitations'' to read as follows:

§ 176.300 Slimicides.

* * * * *

(c) * * *

List of substances	Limitations
* * * * * * *	
1,3-Dihalo-5,5-dimethylhydantoin (where the dihalo (halogen) may be bromine and/or chlorine) that may contain no more than 20 weight percent 1,3-dihalo-5-ethyl-5-methylhydantoin (where the dihalo (halogen) may be bromine and/or chlorine).	At a maximum level of 1.0 kilogram (kg) per 1,000 kg of dry weight fiber.
* * * * * * *	

* * * * *

Dated: June 15, 2000.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–16527 Filed 6–29–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Mine Safety and Health Administration (MSHA)

30 CFR Part 3

Office of Management and Budget Control Numbers Under the Paperwork Reduction Act

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: MSHA (we) are revising section 3.1 of part 3 of our regulations in order to update the display of Office of Management and Budget (OMB) control numbers approved under the Paperwork Reduction Act of 1995 (PRA 95). The display references regulations promulgated under the Federal Mine Safety and Health Act of 1977 containing recordkeeping and reporting requirements along with their associated OMB control numbers. This revision will assist the public search for current information on recordkeeping and reporting requirements approved by OMB.

EFFECTIVE DATE: June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Director; Office of Standards, Regulations, and Variances, MSHA; 703–235–1910.

SUPPLEMENTARY INFORMATION: We published a final rule presenting the OMB control numbers in a new table format which was codified in 30 CFR Part 3 on June 29, 1995 (60 FR 33719). This fulfilled the requirements of 44 U.S.C. 3507(f) of PRA 95 which prohibits an agency from engaging in a collection of information without displaying the control number obtained from OMB. Under PRA 95, no person is required to respond to a collection of information unless a valid OMB control number is displayed.

We are now publishing a revision to update our current display of control numbers issued by OMB for information collection. This includes the addition of control numbers approved by OMB in regulations completed through the rulemaking process since publication of part 3 on June 29, 1995 (60 FR 33719). There are no substantive changes or renewals made to information collection requirements by this technical amendment. Information collection requirements go through the public review process as part of the rule to which they apply. Likewise, the renewal of an OMB control number also requires public review. As a result, we find that there is ''good cause'' under 5 U.S.C., 553 (b)(3)(B) of the Administrative Procedure Act (APA) to issue this technical amendment to Table 1 in 30 Part 3 without prior public notice and comment.

We have also determined there is no need to delay the effective date because the technical amendment contains no new requirements for which the public would need time to plan compliance beyond that provided for in the regulation itself. We find, therefore, there is ''good cause'' to except this action from the 30-day delayed effective date requirement under 5 U.S.C. 553(b)(B) of the Administrative Procedure Act (APA).

List of Subjects in 30 CFR Part 3

Reporting and recordkeeping requirements.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Accordingly, under the authority of 30 U.S.C. 957, chapter I of title 30, Code of Federal Regulations is amended as set forth below.

PART 3—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 30 U.S.C. 957; 44 U.S.C. 3501–3520.

2. Amend § 3.1 by revising Table 1 to read as follows:

§ 3.1 OMB control numbers.

* * * * *

TABLE 1.—OMB CONTROL NUMBERS

30 CFR citation	OMB control no.
Subchapter B—Testing, Evaluation, and Approval of Mining Products	
7.3	1219–0100
7.4	1219–0100
7.6	1219–0100
7.7	1219–0100
7.23	1219–0100
7.27	1219–0100
7.28	1219–0100
7.43	1219–0100
7.46	1219–0100
7.47	1219–0100
7.48	1219–0100
7.51	1219–0100
7.63	1219–0100
7.66	1219–0100
7.67	1219–0100
7.68	1219–0100
7.69	1219–0100
7.71	1219–0100
7.83	1219–0119
7.90	1219–0119
7.97	1219–0119
7.105	1219–0119
7.303	1219–0100
7.306	1219–0100

TABLE 1.—OMB CONTROL NUMBERS—Continued

30 CFR citation	OMB control no.
7.307	1219–0100
7.308	1219–0100
7.309	1219–0100
7.311	1219–0100
7.363	1219–0119
7.371(r), (kk), (ll), (mm), (nn), (oo), (pp)	1219–0119
7.403	1219–0100
7.407	1219–0100
7.408	1219–0100
15.4	1219–0066
15.8	1219–0066
15.10	1219–0066
18.6	1219–0066
18.15	1219–0066
18.81	1219–0066
18.82	1219–0066
18.93	1219–0066
18.94	1219–0066
19.3	1219–0066
19.13	1219–0066
20.3	1219–0066
20.14	1219–0066
21.4	1219–0066
21.10	1219–0066
22.4	1219–0066
22.11	1219–0066
23.3	1219–0066
23.14	1219–0066
24.2	1219–0066
24.9	1219–0066
26.8	1219–0066
26.19	1219–0066
27.4	1219–0066
27.6	1219–0066
27.11	1219–0066
28.10	1219–0066
28.25	1219–0066
28.30	1219–0066
28.31	1219–0066
29.10	1219–0066
29.11	1219–0066
29.12	1219–0066
29.33	1219–0066
29.35	1219–0066
29.40	1219–0066
29.41	1219–0066
29.43	1219–0066
29.54	1219–0066
29.56	1219–0066
33.6	1219–0066
33.12	1219–0066
35.6	1219–0066
35.12	1219–0066
36.6	1219–0066
36.12	1219–0066
Subchapter G—Filing and Other Administrative Requirements	
40.3	1219–0042
40.4	1219–0042
40.5(a)	1219–0042
41.10	1219–0008
41.11	1219–0008
41.12	1219–0008
41.20	1219–0008
43.2	1219–0014
43.4	1219–0014
43.7	1219–0014
43.8	1219–0014
44.9	1219–0065
44.10	1219–0065
44.11	1219–0065
45.3	1219–0043

TABLE 1.—OMB CONTROL NUMBERS—Continued

30 CFR citation	OMB control no.
45.4	1219–0040
46.3	1219–0131
46.5	1219–0131
46.6	1219–0131
46.7	1219–0131
46.8	1219–0131
46.9	1219–0131
46.11	1219–0131
48.3	1219–0009
48.23	1219–0009
48.9	1219–0070
48.29	1219–0070
49.2	1219–0078
49.3	1219–0078
49.4	1219–0078
49.6(b)	1219–0078
49.7	1219–0078, 0049
49.8	1219–0078
49.9	1219–0078
Subchapter M—Accidents, Injuries, Illnesses, Employment, and Production in Mines	
50.10	1219–0007
50.11	1219–0007
50.20	1219–0007
50.30	1219–0006
Subchapter N—Metal and Nonmetal Mine Safety and Health	
56.1000	1219–0092
56.3203(a)	1219–0121
56.5005	1219–0048
56.13015	1219–0089
56.13030	1219–0089
56.14100	1219–0089
56.18002	1219–0089
56.19022	1219–0034
56.19023(a), (c), (d), (e)	1219–0034
56.19057	1219–0049
56.19121	1219–0034
56.19129	1219–0034
56.19131	1219–0034
56.19132	1219–0034
56.19133	1219–0034
56.19134	1219–0034
57.1000	1219–0092
57.3203(a)	1219–0121
57.3461	1219–0097
57.5005	1219–0048
57.5037	1219–0003
57.5040	1219–0003
57.5047	1219–0039
57.8520	1219–0016
57.8525	1219–0012
57.11053	1219–0046
57.13015	1219–0089
57.13030	1219–0089
57.14100	1219–0089
57.18002	1219–0089
57.19022	1219–0034
57.19023(a), (c), (d), (e)	1219–0034
57.19057	1219–0049
57.19121	1219–0034
57.19129	1219–0034
57.19131	1219–0034
57.19132	1219–0034
57.19133	1219–0034
57.19134	1219–0034
57.22004(c)	1219–0103
57.22204	1219–0030
57.22229	1219–0103
57.22230	1219–0103
57.22231	1219–0103
57.22239	1219–0103

TABLE 1.—OMB CONTROL NUMBERS—Continued

30 CFR citation	OMB control no.
57.22401	1219–0096
57.22606	1219–0095
62.120(g)	1219–0122
Subchapter O—Coal Mine Safety and Health	
70.201(c)	1219–0011
70.202(b)	1219–0011
70.204	1219–0128
70.209	1219–0011
70.220(a)	1219–0011
70.500	1219–0120
70.504–1	1219–0001, 0120
70.504–2	1219–0001, 0120
70.506	1219–0037, 0120
70.507	1219–0037, 0120
70.508	1219–0037, 0120
70.509	1219–0037, 0120
70.510	1219–0017, 0120
70.511	1219–0120
71.201(c)	1219–0011
71.202(b)	1219–0011
71.204	1219–0128
71.209	1219–0011
71.220(a)	1219–0011
71.300	1219–0011
71.301(d)	1219–0011
171.403	1219–0024
71.404	1219–0024
71.500	1219–0101
71.800	1219–0120
71.801	1219–0001, 0037
71.802	1219–0037
71.803(a), (b)	1219–0037
71.804(a)	1219–0037
71.805	1219–0120
72.510(a), (b)	1219–0124
75.100	1219–0069
75.153(a)(2)	1219–0001
75.155	1219–0069, 0127
75.159	1219–0127
75.160	1219–0127
75.161	1219–0127
75.204(a)	1219–0121
75.215	1219–0004
75.220	1219–0004
75.221	1219–0004
75.222	1219–0004
75.223(c).	1219–0004
75.310	1219–0088
75.312	1219–0088
75.342(a)(4)	1219–0088, 0067
75.351(f),(h)	1219–0088, 0067
75.360	1219–0088
75.360(a) (1), (f)	1219–0125
75.361	1219–0088
75.362	1219–0088
75.363	1219–0088, 0119
75.364	1219–0088
75.370(a), (f)	1219–0088, 0124
75.371(gg)	1219–0124
75.373	1219–0073
75.382	1219–0088
75.512	1219–0067
75.703–3(d) (11)	1219–0067
75.800–4	1219–0067
75.900–4	1219–0067
75.1001–1(c)	1219–0067
75.1100–3	1219–0054
75.1101–23(a)	1219–0054
75.1101–23(c)	1219–0054
75.1103–8	1219–0054
75.1103–11	1219–0054

TABLE 1.—OMB CONTROL NUMBERS—Continued

30 CFR citation	OMB control no.
75.1200	1219–0073
75.1200–1	1219–0073
75.1201	1219–0073
75.1202	1219–0073
75.1202–1	1219–0073
75.1203	1219–0073
75.1204	1219–0073
75.1204–1	1219–0073
75.1321	1219–0025
75.1327	1219–0025
75.1400–2	1219–0034
75.1400–4	1219–0034
75.1432	1219–0034
75.1433(d), (e)	1219–0034
75.1702	1219–0041
75.1712–4	1219–0024
75.1712–5	1219–0024
75.1712–6	1219–0101
75.1713–1(a), (b), (e)	1219–0078
75.1714–3(e)	1219–0044
75.1716	1219–0020
75.1716–1	1219–0020
75.1716–3	1219–0020
75.1721	1219–0073
75.1901–(a)	1219–0119
75.1904(b) (4) (i)	1219–0119
75.1911(i) (j)	1219–0119
75.1912(h) (i)	1219–0119
75.1914(f)(1), (2); (g)(5); (h)(1), (2)	1219–0119
75.1915(a), (c)	1219–0119, 0124
77.100	1219–0069
77.103(a) (2)	1219–0001
77.105	1219–0069, 0127
77.106	1219–0127
77.107	0127
77.107–1	0127
77.215	1219–0015
77.215–2	1219–0015
77.215–3	1219–0015
77.215–4	1219–0015
77.216–2	1219–0015
77.216–3	1219–0015
77.216–4	1219–0015
77.216–5	1219–0015
77.502	1219–0067
77.800–2	1219–0067
77.900–2	1219–0067
77.1000	1219–0026
77.1000–1	1219–0026
77.1101	1219–0051
77.1200	1219–0073
77.1201	1219–0073
77.1202	1219–0073
77.1404	1219–0034
77.1432	1219–0034
77.1433(d), (e)	1219–0034
77.1702(a), (b), (e)	1219–0078
77.1713	1219–0083
77.1900	1219–0019
77.1901	1219–0082
77.1906	1219–0034
77.1909–1	1219–0025
90.201(c)	1219–0011
90.202(b)	1219–0011
90.204	1219–0128
90.209	1219–0011
90.220(a)	1219–0011
90.300	1219–0011
90.301(d)	1219–0011

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DEPARTMENT OF THE TREASURY

31 CFR Part 1

[1505–AA76]

Departmental Offices; Disclosure of Records: Freedom of Information Act

AGENCY: Department of the Treasury.
ACTION: Final rule.

SUMMARY: This document amends the Department of the Treasury's regulations on the disclosure of records under the Freedom of Information Act (FOIA). The amendment incorporates requirements of the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104–231) with respect to records maintained in electronic formats, the timing of agency responses to FOIA requests, and other procedural matters.

EFFECTIVE DATE: June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Alana Johnson, Departmental Disclosure Officer, Department of the Treasury (202) 622–0930.

SUPPLEMENTARY INFORMATION: On May 6, 1999, the Department published a proposed rule that revised and updated its regulations on disclosure of records under the Freedom of Information Act (FOIA). See 64 FR 24454, May 6, 1999. The public was afforded an opportunity to participate in the rulemaking through submission of written comments on the proposed rule.

Comments

Comments were received from a public interest organization. Two of its recommendations were adopted in part, and as a result, new or revised language has been incorporated in the final regulation. The Department's responses to the specific recommendations made by the public interest organization are given below:

1. *Time-of-Request Cut-off Policy.* The commenter objected to the use of the date of receipt of a request by the appropriate bureau official as a cut-off date for records considered to be responsive to the request. Commenter believes that a later cut-off date will in some circumstances result in a much fuller and complete disclosure. The Department's proposed use of the date of receipt is a wide-spread government practice. To do it otherwise would be administratively impractical. Therefore, Treasury has determined that use of the date of receipt as a cut-off date for responsive records is reasonable.

2. *Expedited Processing and Standard Regarding ''Urgency to Inform.''* The proposed regulation pertaining to requests for expedited processing at § 1.5(e)(2)(ii) includes language which defines ''compelling need'' with respect to a request made by a person primarily engaged in disseminating information. The regulation states that the standard of ''urgency to inform'' requires that the records requested ''pertain to a matter of current exigency to the American public and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the American general public.'' The commenter objects to this standard, asserting that it unduly restricts the types of requests that must be expedited under the statute. The Department believes that the terms ''significant recognized interest'' and ''to and throughout the American public'' do not narrow the application of the statutory language but rather clarify appropriately the basis for permitting expedited processing in specific circumstances. Therefore, no change will be made to this section.

3. *Categories for Expedited Processing.* The commenter recommended that an additional category for expedited processing be added: The loss of substantial due process rights. The Department has decided not to accept this recommendation. This does not eliminate the use of the FOIA process for this purpose, and other avenues are available to an individual to seek records to support a claim that due process rights are not being afforded.

4. The commenter expressed concern about Treasury's receipt of multiple FOIA requests for records about a particular current event, and the possible resultant delay in processing those requests because of an existing request backlog. The Department agrees with the addition of language in the regulation in order to address this concern, and has added the following as paragraph (4) in § 1.5(a):

> When a bureau receives five or more requests for substantially the same records, it shall place those requests in front of an existing request backlog that the responsible official may have. Upon completion of processing, the released records shall be made available in the bureau's public reading room, and if created on or after November 1, 1996, shall be made available in the electronic reading room of the bureau's web site.

5. *Timing for Release of Information Made Available by Computer Telecommunications.* The commenter objected to the Department's language at § 1.4(b), which states that records required to be made available pursuant to section (a)(2) of the FOIA shall be made available on the Internet ''no later than one year after such records are created.'' The commenter believes that the ''no later than one year'' provision is not authorized by statute and imposes a needless delay that frustrates the purpose of the electronic reading room requirement. The Department disagrees. However, the final rule has been revised to include ''as soon as practicable but'' after ''November 1, 1996'' and before ''no later than one year after such records are created * * *.'' In addition, we believe that the inclusion of language at § 1.5(c) (addressing the commenter's concern about existing backlogs delaying multiple requests for same records) addresses this particular concern also. Should multiple requests for the same records be received, those records will be given first priority processing and placed on the Internet.

6. *Consultations and Referrals.* The commenter objects to the Department's practice of referring records which originated at another bureau or agency to that originating bureau or agency for direct response to the requester. The commenter recommends that requests be referred to the originating agency only if that agency ''intended to retain the authority to decide if and when materials are released to the public'' and if ''an intention on the part of the originating agency that it retain control is made evident either by explicit indications to that effect on the face of each record or by the circumstances surrounding the creation and transfer of records.'' The proposed regulations are designed not to delay responses to requests but to facilitate them by providing a process, common throughout the Government, not only in the FOIA context, but in all manner of records handling (*e.g.*, response to Congressional inquiries, declassification review, archival determinations, and discovery in civil litigation), for recognizing other agency equities in documents and providing the agencies opportunity to exercise their judgments about them. There is no suggestion in these regulations that the Department is not ultimately responsible for responding to FOIA requests for documents within its control.

7. *Standards for Multi-track Processing.* The commenter recommends that standards for multi-track processing should be articulated in the regulation. The separate bureaus of the Treasury Department are responsible for establishing FOIA processing operations for their bureau. It is our view that bureau FOIA managers are best able to determine appropriate and

best multi-track processes for their particular request processing operations, should they choose to establish them. For this reason, the regulation contains only general authority for establishing multi-track processing of requests, leaving bureaus the freedom to implement a multi-track system that will work best for their operations. Further, Treasury FOIA personnel are encouraged to communicate with individual requesters to assist them in narrowing the scope of a request if appropriate or possible, or in explaining the kinds or volumes of records existing that may be responsive to a request, with the goal of expediting processing. Therefore, the Department does not intend to regulate standards for multi-track processing.

8. *Guides for Locating Records.* Lastly, the commenter offered enhancements to ''The Freedom of Information Guide to Treasury Records,'' and the commenter's suggestions will be considered. They also recommended that the regulation be amended at § 1.5(d) ''Reasonable description of records'' to include the following: ''You may want to refer to our handbook located on the Internet at *www.ustreas.gov* for assistance in describing the records you seek and for further information on filing a FOIA request.'' Since similar language is in § 1.5(b)(3), this recommendation has not been adopted.

The Department has determined that this document is not a significant regulatory action for purposes of E.O. 12866. Because this document merely incorporates the provisions of the Electronic Freedom of Information Act Amendments of 1996 into Treasury's FOIA regulations and clarifies the current regulations, it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. For this reason, a regulatory flexibility analysis under the Regulatory Flexibility Act, 5 U.S.C. 601–612, is not required.

The Paperwork Reduction Act does not apply because the rule does not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Dated: May 16, 2000.

Lisa Ross,

Acting Assistant Secretary of the Treasury (Management) and Chief Financial Officer.

List of Subjects in 31 CFR Part 1

Freedom of Information.

For the reasons set forth above, Part 1, Subpart A of Title 31 of the Code of Federal Regulations is revised as follows:

PART 1—DISCLOSURE OF RECORDS

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

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

2. Part 1, Subpart A, is revised to read as follows:

Subpart A—Freedom of Information Act

Sec.
1.1 General.
1.2 Information made available.
1.3 Publication in the **Federal Register**.
1.4 Public inspection and copying.
1.5 Specific requests for other records.
1.6 Business information.
1.7 Fees for services.

Appendices to Subpart A

Appendix A—Departmental Offices
Appendix B—Internal Revenue Service
Appendix C—United States Customs Service
Appendix D—United States Secret Service
Appendix E—Bureau of Alcohol, Tobacco and Firearms
Appendix F—Bureau of Engraving and Printing
Appendix G—Financial Management Service
Appendix H—United States Mint
Appendix I—Bureau of the Public Debt
Appendix J—Office of the Comptroller of the Currency
Appendix K—Federal Law Enforcement Training Center
Appendix L—Office of Thrift Supervision

Subpart A—Freedom of Information Act

§ 1.1 General.

(a) *Purpose and scope.* (1) This subpart contains the regulations of the Department of the Treasury implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended by the Electronic Freedom of Information Act Amendments of 1996. The regulations set forth procedures for requesting access to records maintained by the Department of the Treasury. These regulations apply to all bureaus of the Department of the Treasury. Any reference in this subpart to the Department or its officials, employees, or records shall be deemed to refer also to the bureaus or their officials, employees, or records. Persons interested in the records of a particular bureau should also consult the appendix to this subpart that pertains to that bureau. The head of each bureau is hereby authorized to substitute the officials designated and change the addresses specified in the appendix to this subpart applicable to the bureau. The bureaus of the Department of the Treasury for the purposes of this subpart are:

(i) The Departmental Offices, which include the offices of:

(A) The Secretary of the Treasury, including immediate staff;

(B) The Deputy Secretary of the Treasury, including immediate staff;

(C) The Chief of Staff, including immediate staff;

(D) The Executive Secretary and all offices reporting to such official, including immediate staff;

(E) The Under Secretary of the Treasury for International Affairs and all offices reporting to such official, including immediate staff;

(F) The Under Secretary of the Treasury for Domestic Finance and all offices reporting to such official, including immediate staff;

(G) The Under Secretary for Enforcement and all offices reporting to such official, including immediate staff;

(H) The Assistant Secretary of the Treasury for Financial Institutions and all offices reporting to such official, including immediate staff;

(I) The Assistant Secretary of the Treasury for Economic Policy and all offices reporting to such official, including immediate staff;

(J) The Fiscal Assistant Secretary and all offices reporting to such official, including immediate staff;

(K) The General Counsel and all offices reporting to such official, including immediate staff; except legal counsel to the components listed in paragraphs (a)(1)(i)(L), and (a)(1)(i)(S), and (a)((1)(ii) through (xii) of this section;

(L) The Inspector General and all offices reporting to such official, including immediate staff;

(M) The Assistant Secretary of the Treasury for International Affairs and all offices reporting to such official, including immediate staff;

(N) The Assistant Secretary of the Treasury for Legislative Affairs and Public Liaison and all offices reporting to such official, including immediate staff;

(O) The Assistant Secretary of the Treasury for Management and Chief Financial Officer and all offices reporting to such official, including immediate staff;

(P) The Assistant Secretary of the Treasury for Public Affairs and all offices reporting to such official, including immediate staff;

(Q) The Assistant Secretary of the Treasury for Tax Policy and all offices reporting to such official, including immediate staff;

(R) The Treasurer of the United States, including immediate staff;

(S) The Treasury Inspector General for Tax Administration and all offices reporting to such official, including immediate staff.

(ii) The Bureau of Alcohol, Tobacco and Firearms.

(iii) The Office of the Comptroller of the Currency.

(iv) The United States Customs Service.

(v) The Bureau of Engraving and Printing.

(vi) The Federal Law Enforcement Training Center.

(vii) The Financial Management Service.

(viii) The Internal Revenue Service.

(ix) The United States Mint.

(x) The Bureau of the Public Debt.

(xi) The United States Secret Service.

(xii) The Office of Thrift Supervision.

(2) For purposes of this subpart, the office of the legal counsel for the components listed in paragraphs (a)(1)(ii) through (xii) of this section are to be considered a part of their respective bureaus. Any office which is now in existence or may hereafter be established, which is not specifically listed or known to be a component of any of those listed in paragraphs (a)(1)(i) through (xii) of this section, shall be deemed a part of the Departmental Offices for the purpose of making requests for records under this subpart.

(b) *Definitions.* As used in this subpart, the following terms shall have the following meanings:

(1) *Agency* has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(f).

(2) *Appeal* means a request for a review of an agency's determination with regard to a fee waiver, category of requester, expedited processing, or denial in whole or in part of a request for access to a record or records.

(3) *Bureau* means an entity of the Department of the Treasury that is authorized to act independently in disclosure matters.

(4) *Business information* means trade secrets or other commercial or financial information.

(5) *Business submitter* means any entity which provides business information to the Department of the Treasury or its bureaus and which has a proprietary interest in the information.

(6) *Computer software* means tools by which records are created, stored, and retrieved. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium, are not agency records. However, when data are embedded within the software and cannot be extracted without the software, the software may have to be treated as an agency record. Proprietary (or copyrighted) software is not an agency record.

(7) *Confidential commercial information* means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(8) *Duplication* refers to the process of making a copy of a record in order to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (*e.g.*, magnetic tape or disk), among others.

(9) *Electronic records* means those records and information which are created, stored, and retrievable by electronic means. This ordinarily does not include computer software, which is a tool by which to create, store, or retrieve electronic records.

(10) *Request* means any request for records made pursuant to 5 U.S.C. 552(a)(3).

(11) *Requester* means any person who makes a request for access to records.

(12) *Responsible official* means a disclosure officer or the head of the organizational unit having immediate custody of the records requested, or an official designated by the head of the organizational unit.

(13) *Review,* for fee purposes, refers to the process of examining records located in response to a commercial use request to determine whether any portion of any record located is permitted to be withheld. It also includes processing any records for disclosure; *e.g.*, doing all that is necessary to excise them and otherwise prepare them for release.

(14) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within records. Searches may be done manually or by automated means.

§ 1.2 Information made available.

(a) *General.* The FOIA (5 U.S.C. 552) provides for access to information and records developed or maintained by Federal agencies. The provisions of section 552 are intended to assure the right of the public to information. Generally, this section divides agency information into three major categories and provides methods by which each category of information is to be made available to the public. The three major categories of information are as follows:

(1) Information required to be published in the **Federal Register** (see § 1.3);

(2) Information required to be made available for public inspection and copying or, in the alternative, to be published and offered for sale (see § 1.4); and

(3) Information required to be made available to any member of the public upon specific request (see § 1.5).

(b) Subject only to the exemptions and exclusions set forth in 5 U.S.C. 552(b) and (c), any person shall be afforded access to information or records in the possession of any bureau of the Department of the Treasury, subject to the regulations in this subpart and any regulations of a bureau implementing or supplementing them.

(c) *Exemptions.* (1) The disclosure requirements of 5 U.S.C. 552(a) do not apply to certain matters which are exempt under 5 U.S.C. 552(b); nor do the disclosure requirements apply to certain matters which are excluded under 5 U.S.C. 552(c).

(2) Even though an exemption described in 5 U.S.C. 552(b) may be applicable to the information or records requested, a Treasury bureau may, if not precluded by law, elect under the circumstances of that request not to apply the exemption. The fact that the exemption is not applied by a bureau in response to a particular request shall have no precedential significance in processing other requests, but is merely an indication that, in the processing of the particular request, the bureau finds no necessity for applying the exemption.

§ 1.3 Publication in the Federal Register.

(a) *Requirement.* Subject to the application of the exemptions and exclusions in 5 U.S.C. 552(b) and (c) and subject to the limitations provided in 5 U.S.C. 552(a)(1), each Treasury bureau shall, in conformance with 5 U.S.C. 552(a)(1), separately state, publish and maintain current in the **Federal Register** for the guidance of the public the following information with respect to that bureau:

(1) Descriptions of its central and field organization and the established places at which, the persons from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(2) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the bureau; and

(5) Each amendment, revision, or repeal of matters referred to in paragraphs (a)(1) through (4) of this section.

(b) *The United States Government Manual.* The functions of each bureau are summarized in the description of the Department and its bureaus in the United States Government Manual, which is issued annually by the Office of the Federal Register.

§ 1.4 Public inspection and copying.

(a) *In general.* Subject to the application of the exemptions and exclusions described in 5 U.S.C. 552(b) and (c), each Treasury bureau shall, in conformance with 5 U.S.C. 552(a)(2), make available for public inspection and copying, or, in the alternative, promptly publish and offer for sale the following information with respect to the bureau:

(1) Final opinions, including concurring and dissenting opinions, and orders, made in the adjudication of cases;

(2) Those statements of policy and interpretations which have been adopted by the bureau but are not published in the **Federal Register**;

(3) Its administrative staff manuals and instructions to staff that affect a member of the public;

(4) Copies of all records, regardless of form or format, which have been released to any person under 5 U.S.C. 552(a)(3), and which the bureau determines have become or are likely to become the subject of subsequent requests for substantially the same records because they are clearly of interest to the public at large. The determination that records have become or may become the subject of subsequent requests shall be made by the Responsible Official (as defined at § 1.1(b)(12)).

(5) A general index of the records referred to in paragraph (a)(4) of this section.

(b) *Information made available by computer telecommunications.* For records required to be made available for public inspection and copying pursuant to 5 U.S.C. 552(a)(2) (paragraphs (a)(1) through (4) of this section) which are created on or after November 1, 1996, as soon as practicable but no later than one year after such records are created, each bureau shall make such records available on the Internet.

(c) *Deletion of identifying details.* To prevent a clearly unwarranted invasion of personal privacy, or pursuant to an exemption in 5 U.S.C. 552(b), a Treasury bureau may delete information contained in any matter described in paragraphs (a)(1) through (4) of this section before making such matters available for inspection or publishing it. The justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in 5 U.S.C. 552(b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made.

(d) *Public reading rooms.* Each bureau of the Department of the Treasury shall make available for public inspection and copying, in a reading room or otherwise, the material described in paragraphs (a)(1) through (5) of this section. Fees for duplication shall be charged in accordance with § 1.7. See the appendices to this subpart for the location of established bureau reading rooms.

(e) *Indexes.* (1) Each bureau of the Department of the Treasury shall maintain and make available for public inspection and copying current indexes identifying any material described in paragraphs (a)(1) through (3) of this section. In addition, each bureau shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplement unless the head of each bureau (or a delegate) determines by order published in the **Federal Register** that the publication would be unnecessary and impractical, in which case the bureau shall nonetheless provide copies of the index on request at a cost not to exceed the direct cost of duplication.

(2) Each bureau shall make the index referred to in paragraph (a)(5) of this section available on the Internet by December 31, 1999.

§ 1.5 Specific requests for other records.

(a) *In general.* (1) Except for records made available under 5 U.S.C. 552(a)(1) and (a)(2), but subject to the application of the exemptions and exclusions described in 5 U.S.C. 552(b) and (c), each bureau of the Department of the Treasury shall promptly make the requested records available to any person in conformance with 5 U.S.C. 552(a)(3). The request must conform in every respect with the rules and procedures of this subpart and the applicable bureau's appendix to this subpart. Any request or appeal from the initial denial of a request that does not comply with the requirements in this subpart will not be considered subject to the time constraints of paragraphs (h), (i), and (j) of this section, unless and until the request is amended to comply. Bureaus shall promptly advise the requester in what respect the request or appeal is deficient so that it may be amended and resubmitted for consideration in accordance with this subpart. If a requester does not respond within 30 days to a communication from a bureau to amend the request in order for it to be in conformance with this subpart, the request file will be considered closed. When the request conforms with the requirements of this subpart, bureaus shall make every reasonable effort to comply with the request within the time constraints. If the description of the record requested is of a type that is not maintained by the bureau, the requester shall be so advised and the request shall be returned to the requester.

(2) This subpart applies only to records in the possession or control of the bureau at the time of the request. Records considered to be responsive to the request are those in existence on or before the date of receipt of the request by the appropriate bureau official. Requests for the continuing production of records created after the date of the appropriate bureau official's receipt of the request shall not be honored. Bureaus shall provide the responsive record or records in the form or format requested if the record or records are readily reproducible by the bureau in that form or format. Bureaus shall make reasonable efforts to maintain their records in forms or formats that are reproducible for the purpose of disclosure. For purposes of this section, *readily reproducible* means, with respect to electronic format, a record or records that can be downloaded or transferred intact to a floppy disk, compact disk (CD), tape, or other electronic medium using equipment currently in use by the office or offices processing the request. Even though some records may initially be readily reproducible, the need to segregate exempt from nonexempt records may cause the releasable material to not be readily reproducible.

(3) Requests for information classified pursuant to Executive Order 12958, ''Classified National Security Information,'' require the responsible bureau to review the information to determine whether it continues to warrant classification. Information

which no longer warrants classification under the Executive Order's criteria shall be declassified and made available to the requester, unless the information is otherwise exempt from disclosure.

(4) When a bureau receives five or more requests for substantially the same records, it shall place those requests in front of an existing request backlog that the responsible official may have. Upon completion of processing, the released records shall be made available in the bureau's public reading room, and if created on or after November 1, 1996, shall be made available in the electronic reading room of the bureau's web site.

(b) *Form of request.* In order to be subject to the provisions of this section, the following must be satisfied.

(1) The request for records shall be made in writing, signed by the person making the request, and state that it is made pursuant to the Freedom of Information Act, 5 U.S.C. 552, or this subpart.

(2) The request shall indicate whether the requester is a commercial user, an educational institution, non-commercial scientific institution, representative of the news media, or ''other'' requester, subject to the fee provisions described in § 1.7. In order for the Department to determine the proper category for fee purposes as defined in this section, a request for records shall also state how the records released will be used. This information shall not be used to determine the releasibility of any record or records. A determination of the proper category of requester shall be based upon a review of the requester's submission and the bureau's own records. Where a bureau has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, bureaus should seek additional clarification before assigning the request to a specific category. The categories of requesters are defined as follows:

(i) *Commercial.* A commercial use request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation. The bureaus may determine from the use specified in the request that the requester is a commercial user.

(ii) *Educational institution.* This refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. This category does not include requesters wanting records for use in meeting individual academic research or study requirements.

(iii) *Non-commercial scientific institution.* This refers to an institution that is not operated on a ''commercial'' basis as that term is defined in paragraph (b)(2)(i) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(iv) *Representative of the news media.* This refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. In the case of ''freelance'' journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but bureaus may also look to the past publication record of a requester in making this determination.

(v) *''Other'' Requester.* This refers to a requester who does not fall within any of the previously described categories.

(3) The request must be properly addressed to the bureau that maintains the record. The functions of each bureau are summarized in *The United States Government Manual* which is issued annually and is available from the Superintendent of Documents. Both the envelope and the request itself should be clearly marked ''Freedom of Information Act Request.'' See the appendices to this subpart for the office or officer to which requests shall be addressed for each bureau. A requester in need of guidance in defining a request or determining the proper bureau to which a request should be sent may contact Disclosure Services at 202/622–0930, or may write to Disclosure Services, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Requesters may access the ''FOIA Home Page'' at the Department of the Treasury World Wide Web site at: http://www.treas.gov.

(4) The request must reasonably describe the records in accordance with paragraph (d) of this section.

(5) The request must set forth the address where the person making the request wants to be notified about whether or not the request will be granted.

(6) The request must state whether the requester wishes to inspect the records or desires to have a copy made and furnished without first inspecting them.

(7) The request must state the firm agreement of the requester to pay the fees for search, duplication, and review as may ultimately be determined in accordance with § 1.7. The agreement may state the upper limit (but not less than $25) that the requester is willing to pay for processing the request. A request that fees be waived or reduced may accompany the agreement to pay fees and shall be considered to the extent that such request is made in accordance with § 1.7(d) and provides supporting information to be measured against the fee waiver standard set forth in § 1.7(d)(1). The requester shall be notified in writing of the decision to grant or deny the fee waiver. A requester shall be asked to provide an agreement to pay fees when the request for a fee waiver or reduction is denied and the initial request for records does not include such agreement. If a requester has an outstanding balance of search, review, or duplication fees due for FOIA request processing, the requirements of this paragraph are not met until the requester has remitted the outstanding balance due.

(c) *Requests for records not in control of bureau; referrals; consultations.* (1) When a requested record is in the possession or under the control of a bureau of the Department other than the office to which the request is addressed, the request for the record shall be transferred to the appropriate bureau and the requester notified. This referral shall not be considered a denial of access within the meaning of these regulations. The bureau of the Department to which this referral is made shall treat this request as a new request addressed to it and the time limits for response set forth by paragraph (h)(1) of this section shall begin when the referral is received by the designated office or officer of the bureau.

(2) When a requested record has been created by an agency or Treasury bureau other than the Treasury bureau possessing the record, the bureau having custody of the record shall refer the record to the originating agency or

Treasury bureau for a direct response to the requester. The requester shall be informed of the referral unless otherwise instructed by the originating agency. This is not a denial of a FOIA request; thus no appeal rights accrue to the requester.

(3) When a FOIA request is received for a record created by a Treasury bureau that includes information originated by another bureau of the Department of the Treasury or another agency, the record shall be referred to the originating agency or bureau for review and recommendation on disclosure. The agency or bureau shall respond to the referring office. The Treasury bureau shall not release any such records without prior consultation with the originating bureau or agency.

(4) In certain instances and at the discretion of the Departmental Offices, requests having impact on two or more bureaus of the Department may be coordinated by the Departmental Offices.

(d) *Reasonable description of records.* The request for records must describe the records in reasonably sufficient detail to enable employees who are familiar with the subject area of the request to locate the records without placing an unreasonable burden upon the Department. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipients, and subject matter of the record. If the Department determines that the request does not reasonably describe the records sought, the requester shall be given an opportunity to provide additional information. Such opportunity may, when necessary, involve a discussion with knowledgeable Department of the Treasury personnel. The reasonable description requirement shall not be used by officers or employees of the Department of the Treasury to improperly withhold records from the public.

(e) *Requests for expedited processing.* (1) When a request for records includes a request for expedited processing, both the envelope and the request itself must be clearly marked, ''Expedited Processing Requested.''

(2) Records will be processed as soon as practicable when a requester asks for expedited processing in writing and is granted such expedited treatment by the Department. The requester must demonstrate a compelling need for expedited processing of the requested records. A compelling need is defined as follows:

(i) Failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The requester shall fully explain the circumstances warranting such an expected threat so that the Department may make a reasoned determination that a delay in obtaining the requested records could pose such a threat; or

(ii) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity. A person ''primarily engaged in disseminating information'' does not include individuals who are engaged only incidentally in the dissemination of information. The standard of ''urgency to inform'' requires that the records requested pertain to a matter of current exigency to the American public and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the American general public. The requester must adequately explain the matter or activity and why the records sought are necessary to be provided on an expedited basis.

(3) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by the requester to be true and correct to the best of his or her knowledge and belief. The statement must be in the form prescribed by 28 U.S.C. 1746, ''I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on [date].''

(4) Upon receipt by the appropriate bureau official, a request for expedited processing shall be considered and a determination as to whether to grant or deny the request for expedited processing shall be made, and the requester notified, within 10 calendar days of the date of the request. However, in no event shall the bureau have fewer than five days (excluding Saturdays, Sundays, and legal public holidays) from the date of receipt of the request for such processing. The determination to grant or deny a request for expedited processing may be made solely on the information contained in the initial letter requesting expedited treatment.

(5) Appeals of initial determinations to deny expedited processing must be made within 10 calendar days of the date of the initial letter of determination denying expedited processing. Both the envelope and the appeal itself shall be clearly marked, ''Appeal for Expedited Processing.''

(6) An appeal determination regarding expedited processing shall be made, and the requester notified, within 10 days (excluding Saturdays, Sundays, and legal public holidays) from the date of receipt of the appeal.

(f) *Date of receipt of request.* A request for records shall be considered to have been received on the date on which a complete request containing the information required by paragraph (b) of this section has been received. A determination that a request is deficient in any respect is not a denial of access, and such determinations are not subject to administrative appeal. Requests shall be stamped with the date of receipt by the office prescribed in the appropriate appendix. As soon as the date of receipt has been established, the requester shall be so informed and shall also be advised when to expect a response. The acknowledgment of receipt requirement shall not apply if a disclosure determination will be issued prior to the end of the 20-day time limit.

(g) *Search for record requested.* Department of the Treasury employees shall search to identify and locate requested records, including records stored at Federal Records Centers. Searches for records maintained in electronic form or format may require the application of codes, queries, or other minor forms of programming to retrieve the requested records. Wherever reasonable, searches shall be done by electronic means. However, searches of electronic records are not required when such searches would significantly interfere with the operation of a Treasury automated information system or would require unreasonable effort to conduct. The Department of the Treasury is not required under 5 U.S.C. 552 to tabulate or compile information for the purpose of creating a record or records that do not exist.

(h) *Initial determination.* (1) *In general.* The officers designated in the appendices to this part shall make initial determinations either to grant or to deny in whole or in part requests for records. Such officers shall respond in the approximate order of receipt of the requests, to the extent consistent with sound administrative practice. These determinations shall be made and the requester notified within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the date of receipt of the request, as determined in accordance with paragraph (f) of this section, unless the designated officer invokes an extension pursuant to paragraph (j)(1) of this section or the requester otherwise agrees to an extension of the 20-day time limitation.

(2) *Granting of request.* If the request is granted in full or in part, and if the requester wants a copy of the records, a copy of the records shall be mailed to

the requester, together with a statement of the applicable fees, either at the time of the determination or shortly thereafter.

(3) *Inspection of records.* In the case of a request for inspection, the requester shall be notified in writing of the determination, when and where the requested records may be inspected, and of the fees incurred in complying with the request. The records shall then promptly be made available for inspection at the time and place stated, in a manner that will not interfere with Department of the Treasury operations and will not exclude other persons from making inspections. The requester shall not be permitted to remove the records from the room where inspection is made. If, after making inspection, the requester desires copies of all or a portion of the requested records, copies shall be furnished upon payment of the established fees prescribed by § 1.7. Fees may be charged for search and review time as stated in § 1.7.

(4) *Denial of request.* If it is determined that the request for records should be denied in whole or in part, the requester shall be notified by mail. The letter of notification shall:

(i) State the exemptions relied on in not granting the request;

(ii) If technically feasible, indicate the amount of information deleted at the place in the record where such deletion is made (unless providing such indication would harm an interest protected by the exemption relied upon to deny such material);

(iii) Set forth the name and title or position of the responsible official;

(iv) Advise the requester of the right to administrative appeal in accordance with paragraph (i) of this section; and

(v) Specify the official or office to which such appeal shall be submitted.

(5) *No records found.* If it is determined, after a thorough search for records by the responsible official or his delegate, that no records have been found to exist, the responsible official will so notify the requester in writing. The letter of notification will advise the requester of the right to administratively appeal the Department's determination that no records exist (*i.e.*, to challenge the adequacy of the Department's search for responsive records) in accordance with paragraph (i) of this section. The response shall specify the official or office to which the appeal shall be submitted for review.

(i) *Administrative appeal.* (1)(i) A requester may appeal a Department of the Treasury initial determination when:

(A) Access to records has been denied in whole or in part;

(B) There has been an adverse determination of the requester's category as provided in § 1.7(d)(4);

(C) A request for fee waiver or reduction has been denied;

(D) It has been determined that no responsive records exist; or

(E) A request for expedited processing has been denied.

(ii) An appeal, other than an appeal for expedited processing, must be submitted within 35 days of the date of the initial determination or the date of the letter transmitting the last records released, whichever is later, except in the case of a denial for expedited processing. An appeal of a denial for expedited processing must be made within 10 days of the date of the initial determination to deny expedited processing (see § 1.5(e)(5)). All appeals must be submitted to the official specified in the appropriate appendix to this subpart whose title and address should also have been included in the initial determination. An appeal that is improperly addressed shall be considered not to have been received by the Department until the office specified in the appropriate appendix receives the appeal.

(2) The appeal shall—

(i) Be made in writing and signed by the requester or his or her representative;

(ii) Be addressed to and mailed or hand delivered within 35 days (or within 10 days when expedited processing has been denied) of the date of the initial determination, or the date of the letter transmitting the last records released, whichever is later, to the office or officer specified in the appropriate appendix to this subpart and also in the initial determination. (See the appendices to this subpart for the address to which appeals made by mail should be addressed);

(iii) Set forth the address where the requester desires to be notified of the determination on appeal;

(iv) Specify the date of the initial request and date of the letter of initial determination, and, where possible, enclose a copy of the initial request and the initial determination being appealed.

(3)(i) Appeals shall be stamped with the date of their receipt by the office to which addressed, and shall be processed in the approximate order of their receipt. The receipt of the appeal shall be acknowledged by the office or officer specified in the appropriate appendix to this subpart and the requester advised of the date the appeal was received and the expected date of response. The decision to affirm the initial determination (in whole or in part) or to grant the request for records shall be made and notification of the determination mailed within 20 days (exclusive of Saturdays, Sundays, and legal public holidays) after the date of receipt of the appeal, unless extended pursuant to paragraph (j)(1) of this section. If it is decided that the initial determination is to be upheld (in whole or in part) the requester shall be—

(A) Notified in writing of the denial;

(B) Notified of the reasons for the denial, including the FOIA exemptions relied upon;

(C) Notified of the name and title or position of the official responsible for the determination on appeal; and

(D) Provided with a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has a principal place of business, the judicial district in which the requested records are located, or the District of Columbia in accordance with 5 U.S.C. 552(a)(4)(B).

(ii) If the initial determination is reversed on appeal, the requester shall be so notified and the request shall be processed promptly in accordance with the decision on appeal.

(4) If a determination cannot be made within the 20-day period (or within a period of extension pursuant to paragraph (j)(1) of this section), the requester may be invited to agree to a voluntary extension of the 20-day appeal period. This voluntary extension shall not constitute a waiver of the right of the requester ultimately to commence an action in a United States district court.

(j) *Time extensions; unusual circumstances.* (1) In unusual circumstances, the time limitations specified in paragraphs (h) and (i) of this section may be extended by written notice from the official charged with the duty of making the determination to the person making the request or appeal setting forth the reasons for this extension and the date on which the determination is expected to be sent. As used in this paragraph, *unusual circumstances* means, but only to the extent reasonably necessary to the proper processing of the particular requests:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more bureaus or components of bureaus of the Department of the Treasury having substantial subject matter interest therein.

(2) Any extension or extensions of time shall not cumulatively total more than 10 days (exclusive of Saturdays, Sundays, and legal public holidays). However, if additional time is needed to process the request, the bureau shall notify the requester and provide the requester an opportunity to limit the scope of the request or arrange for an alternative time frame for processing the request or a modified request. The requester shall retain the right to define the desired scope of the request, as long as it meets the requirements contained in this subpart.

(3) Bureaus may establish multitrack processing of requests based on the amount of work or time, or both, involved in processing requests.

(4) If more than one request is received from the same requester, or from a group of requesters acting in concert, and the Department believes that such requests constitute a single request which would otherwise satisfy the unusual circumstances specified in paragraph (j)(1) of this section, and the requests involve clearly related matters, the Department may aggregate these requests for processing purposes.

(k) *Failure to comply.* If a bureau of the Department of the Treasury fails to comply with the time limits specified in paragraphs (h) or (i) of this section , or the time extensions of paragraph (j) of this section, any person making a request for records in accordance with § 1.5 shall be considered to have exhausted administrative remedies with respect to the request. Accordingly, the person making the request may initiate suit as set forth in paragraph (l) of this section.

(l) *Judicial review.* If an adverse determination is made upon appeal pursuant to paragraph (i) of this section, or if no determination is made within the time limits specified in paragraphs (h) and (i) of this section, together with any extension pursuant to paragraph (j)(1) of this section or within the time otherwise agreed to by the requester, the requester may commence an action in a United States district court in the district in which he resides, in which his principal place of business is located, in which the records are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a)(4).

(m) *Preservation of records.* Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

(n) *Processing requests that are not properly addressed.* A request that is not properly addressed as specified in the appropriate appendix to this subpart shall be forwarded to the appropriate bureau or bureaus for processing. If the recipient of the request does not know the appropriate bureau to forward it to, the request shall be forwarded to the Departmental Disclosure Officer (Disclosure Services, DO), who will determine the appropriate bureau. A request not addressed to the appropriate bureau will be considered to have been received for purposes of paragraph (f) of this section when the request has been received by the appropriate bureau office as designated in the appropriate appendix to this subpart. An improperly addressed request, when received by the appropriate bureau office, shall be acknowledged by that bureau.

§1.6 Business information.

(a) *In general.* Business information provided to the Department of the Treasury by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section.

(b) *Notice to business submitters.* A bureau shall provide a business submitter with prompt written notice of receipt of a request or appeal encompassing its business information whenever required in accordance with paragraph (c) of this section, and except as is provided in paragraph (g) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the business information.

(c) *When notice is required.* The bureau shall provide a business submitter with notice of receipt of a request or appeal whenever:

(1) The business submitter has in good faith designated the information as commercially or financially sensitive information, or

(2) The bureau has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(3) Notice of a request for business information falling within paragraph (c)(1) or (2) of this section shall be required for a period of not more than ten years after the date of submission unless the business submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(4) The submitter's claim of confidentiality should be supported by a statement by an authorized representative of the company providing specific justification that the information in question is in fact confidential commercial or financial information and has not been disclosed to the public.

(d) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (b) of this section, a bureau shall afford a business submitter ten days from the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays) to provide the bureau with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, shall demonstrate why the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(2) When notice is given to a submitter under this section, the requester shall be advised that such notice has been given to the submitter. The requester shall be further advised that a delay in responding to the request may be considered a denial of access to records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. However, the requester will be invited to agree to a voluntary extension of time so that the bureau may review the business submitter's objection to disclose.

(e) *Notice of intent to disclose.* A bureau shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever a bureau decides to disclose business information over the objection of a business submitter, the bureau shall forward to the business submitter a written notice which shall include:

(1) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date which is not less than ten days (exclusive of Saturdays, Sundays, and legal public holidays) after the notice of the final decision to release the requested information has been mailed to the submitter. Except as otherwise

prohibited by law, a copy of the disclosure notice shall be forwarded to the requester at the same time.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (c) of this section, the bureau shall promptly notify the business submitter.

(g) *Exception to notice requirement.* The notice requirements of this section shall not apply if:

(1) The bureau determines that the information shall not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

§ 1.7 Fees for services.

(a) *In general.* This fee schedule is applicable uniformly throughout the Department of the Treasury and pertains to requests processed under the Freedom of Information Act. Specific levels of fees are prescribed for each of the following categories of requesters. Requesters are asked to identify the applicable fee category they belong to in their initial request in accordance with § 1.5(b).

(1) *Commercial use requesters.* These requesters are assessed charges which recover the full direct costs of searching for, reviewing, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of duplication of documents. Moreover, when a request is received for disclosure that is primarily in the commercial interest of the requester, the Department is not required to consider a request for a waiver or reduction of fees based upon the assertion that disclosure would be in the public interest. The Department may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records, or no records are located.

(2) *Educational and Non-Commercial Scientific Institution Requesters.* Records shall be provided to requesters in these categories for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible, requesters must show that the request is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. These categories do not include requesters who want records for use in meeting individual academic research or study requirements.

(3) *Requesters who are Representatives of the News Media.* Records shall be provided to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages.

(4) *All Other Requesters.* Requesters who do not fit any of the categories described above shall be charged fees that will recover the full direct cost of searching for and duplicating records that are responsive to the request, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. The Department may recover the cost of searching for records even if there is ultimately no disclosure of records, or no records are located. Requests from persons for records about themselves filed in the Department's systems of records shall continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for duplication, after the first 100 pages are furnished free of charge.

(b) *Fee waiver determination.* Where the initial request includes a request for reduction or waiver of fees, the responsible official shall determine whether to grant the request for reduction or waiver before processing the request and notify the requester of this decision. If the decision does not waive all fees, the responsible official shall advise the requester of the fact that fees shall be assessed and, if applicable, payment must be made in advance pursuant to § 1.7(e)(2).

(c) *When fees are not charged.* (1) No fee shall be charged for monitoring a requester's inspection of records.

(2) Fees shall be charged in accordance with the schedule contained in paragraph (g) of this section for services rendered in responding to requests for records, unless any one of the following applies:

(i) Services were performed without charge;

(ii) The cost of collecting a fee would be equal to or greater than the fee itself; or,

(iii) The fees were waived or reduced in accordance with paragraph (d) of this section.

(d) *Waiver or reduction of fees.* (1) Fees may be waived or reduced on a case-by-case basis in accordance with this paragraph by the official who determines the availability of the records, provided such waiver or reduction has been requested in writing. Fees shall be waived or reduced by this official when it is determined, based upon the submission of the requester, that a waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Fee waiver/reduction requests shall be evaluated against the fee waiver policy guidance issued by the Department of Justice on April 2, 1987.

(2) Normally no charge shall be made for providing records to state or foreign governments, international governmental organizations, or local government agencies or offices.

(3) Appeals from denials of requests for waiver or reduction of fees shall be decided in accordance with the criteria set forth in paragraph (d)(1) of this section by the official authorized to decide appeals from denials of access to records. Appeals shall be addressed in writing to the office or officer specified in the appropriate appendix to this subpart within 35 days of the denial of the initial request for waiver or reduction and shall be decided within 20 days (excluding Saturdays, Sundays, and legal public holidays).

(4) Appeals from an adverse determination of the requester's category as described in § 1.5(b)(2) and provided in § 1.5(i)(1) shall be decided by the official authorized to decide appeals from denials of access to records and shall be based upon a review of the requester's submission and the bureau's own records. Appeals shall be addressed in writing to the office or officer specified in the appropriate appendix to this subpart within 35 days of the date of the bureau's determination of the requester's category and shall be decided within 20 days (excluding Saturdays, Sundays, and legal public holidays).

(e) *Advance notice of fees.* (1) When the fees for processing the request are estimated to exceed the limit set by the requester, and that amount is less than $250, the requester shall be notified of the estimated costs. The requester must provide an agreement to pay the estimated costs; however, the requester shall also be given an opportunity to reformulate the request in an attempt to reduce fees.

(2) If the requester has failed to state a limit and the costs are estimated to exceed $250.00, the requester shall be notified of the estimated costs and must pre-pay such amount prior to the processing of the request, or provide satisfactory assurance of full payment if the requester has a history of prompt payment of FOIA fees. The requester shall also be given an opportunity to

reformulate the request in such a way as to constitute a request for responsive records at a reduced fee.

(3) When the Department or a bureau of the Department acts under paragraphs (e)(1) or (2) of this section, the administrative time limits of 20 days (excluding Saturdays, Sundays, and legal public holidays) from receipt of initial requests or appeals, plus extensions of these time limits, shall begin only after fees have been paid, a written agreement to pay fees has been provided, or a request has been reformulated.

(f) *Form of payment.* (1) Payment may be made by check or money order payable to the Treasury of the United States or the relevant bureau of the Department of the Treasury.

(2) The Department of the Treasury reserves the right to request prepayment after a request is processed and before documents are released.

(3) When costs are estimated or determined to exceed $250, the Department shall either obtain satisfactory assurance of full payment of the estimated cost where the requester has a history of prompt payment of FOIA fees or require a requester to make an advance payment of the entire estimated or determined fee before continuing to process the request.

(4) If a requester has previously failed to pay a fee within 30 days of the date of the billing, the requester shall be required to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Department begins to process a new request or the pending request. Whenever interest is charged, the Department shall begin assessing interest on the 31st day following the day on which billing was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717. In addition, the Department shall take all steps authorized by the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996, including administrative offset pursuant to 31 CFR Part 5, disclosure to consumer reporting agencies and use of collection agencies, to effect payment.

(g) *Amounts to be charged for specific services.* The fees for services performed by a bureau of the Department of the Treasury shall be imposed and collected as set forth in this paragraph.

(1) *Duplicating records.* All requesters, except commercial requesters, shall receive the first 100 pages duplicated without charge. Absent a determination to waive fees, a bureau shall charge requesters as follows:

(i) $.20 per page, up to 8½ × 14″, made by photocopy or similar process.

(ii) Photographs, films, and other materials—actual cost of duplication.

(iii) Other types of duplication services not mentioned above—actual cost.

(iv) Material provided to a private contractor for copying shall be charged to the requester at the actual cost charged by the private contractor.

(2) *Search services.* Bureaus shall charge for search services consistent with the following:

(i) *Searches for other than electronic records.* The Department shall charge for search time at the salary rate(s) (basic pay plus 16 percent) of the employee(s) making the search. However, where a single class of personnel is used exclusively (*e.g.,* all administrative/clerical, or all professional/executive), an average rate for the range of grades typically involved may be established. This charge shall include transportation of personnel and records necessary to the search at actual cost. Fees may be charged for search time as prescribed in § 1.7, even if the search does not yield any responsive records, or if records are denied.

(ii) *Searches for electronic records.* The Department shall charge for actual direct cost of the search, including computer search time, runs, and the operator's salary. The fee for computer output shall be actual direct costs. For requesters in the ''all other'' category, when the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search (*i.e.,* the operator), the charge for the computer search will begin.

(3) *Review of records.* The Department shall charge commercial use requesters for review of records at the salary rate(s) (*i.e.,* basic pay plus 16 percent) of the employee(s) making the review. However, when a single class of personnel is used exclusively (*e.g.,* all administrative/clerical, or all professional/executive), an average rate for the range of grades typically involved may be established. Fees may be charged for review time as prescribed in § 1.7, even if records ultimately are not disclosed.

(4) *Inspection of records.* Fees for all services provided shall be charged whether or not copies are made available to the requester for inspection.

(5) *Other services.* Other services and materials requested which are not covered by this part nor required by the FOIA are chargeable at the actual cost to the Department. This includes, but is not limited to:

(i) Certifying that records are true copies;

(ii) Sending records by special methods such as express mail, etc.

(h) *Aggregating requests.* When the Department or a bureau of the Department reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the agency shall aggregate any such requests and charge accordingly.

Appendices to Subpart A

Appendix A—Departmental Offices

1. *In general.* This appendix applies to the Departmental Offices as defined in 31 CFR 1.1(a)(1).

2. *Public reading room.* The public reading room for the Departmental Offices is the Treasury Library. The Library is located in the Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. For building security purposes, visitors are required to make an appointment by calling 202–622–0990.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the Departmental Offices will be made by the head of the organizational unit having immediate custody of the records requested or the delegate of such official. Requests for records should be addressed to: Freedom of Information Request, DO, Assistant Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

4. *Administrative appeal of initial determination to deny records.*

(i) Appellate determinations under 31 CFR 1.5(i) with respect to records of the Departmental Offices will be made by the Secretary, Deputy Secretary, Under Secretary, General Counsel, Inspector General, Treasury Inspector General for Tax Administration, Treasurer of the United States, or Assistant Secretary having jurisdiction over the organizational unit which has immediate custody of the records requested, or the delegate of such officer.

(ii) Appellate determinations with respect to requests for expedited processing shall be made by the Deputy Assistant Secretary (Administration).

(iii) Appeals should be addressed to: Freedom of Information Appeal, DO, Assistant Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

5. *Delivery of process.* Service of process will be received by the General Counsel of the Department of the Treasury or the delegate of such officer and shall be delivered to the following location: General Counsel, Department of the Treasury, Room 3000, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Appendix B—Internal Revenue Service

1. *In general.* This appendix applies to the Internal Revenue Service. See also 26 CFR 601.702.

2. *Public reading room.* The public reading rooms for the Internal Revenue Service are maintained at the following location:

National Office

Mailing Address

Freedom of Information Reading Room, PO Box 795, Ben Franklin Station, Washington, DC 20044

Walk-In Address

Room 1621, 1111 Constitution Avenue, NW., Washington, DC

Northeast Region

Mailing Address

Freedom of Information Reading Room, PO Box 5138, E:QMS:D, New York, NY 10163

Walk-In Address

11th Floor, 110 W. 44th Street, New York, NY

Midstates Region

Mailing Address

Freedom of Information Reading Room, Mail Code 7000 DAL, 1100 Commerce Street, Dallas, TX 75242

Walk-In Address

10th Floor, Rm. 10B37, 1100 Commerce Street, Dallas, TX

Southeast Region

Mailing Address

401 W. Peachtree Street, NW., Stop 601D, Room 868, Atlanta, GA 30365

Walk-In Address

Same as mailing address

Western Region

Mailing Address

1301 Clay Street, Stop 800–S, Oakland, CA 94612

Walk-In Address

8th Floor, 1301 Clay Street, Oakland, CA

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the Internal Revenue Service, grant expedited processing, grant a fee waiver, or determine requester category will be made by those officials specified in 26 CFR 601.702.

4. *Administrative appeal of initial determination to deny records.* Appellate eterminations under 31 CFR 1.5(i) with respect to records of the Internal Revenue Service will be made by the Commissioner of Internal Revenue or the delegate of such officer. Appeals made by mail should be addressed to: Freedom of Information Appeal, Commissioner of Internal Revenue Service, c/o Ben Franklin Station, PO Box 929, Washington, DC 20044.

Appeals may be delivered personally to the Assistant Chief Counsel (Disclosure Litigation) CC:EL:D, Office of the Chief Counsel, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C.

5. *Delivery of process.* Service of process shall be effected consistent with Rule 4 of the Federal Rule of Civil Procedure, and directed to the Commissioner of Internal Revenue at the following address: Commissioner, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Attention: CC:EL:D.

Appendix C—United States Customs Service

1. *In general.* This appendix applies to the United States Customs Service.

2. *Public reading room.* The public reading room for the United States Customs Service is maintained at the following location: United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229.

3. *Requests for records.*

(a) Headquarters—Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records will be made by the appropriate Division Director at Customs Service Headquarters having custody of or functional jurisdiction over the subject matter of the requested records. If the request relates to records maintained in an office which is not within a division, the initial determination shall be made by the individual designated for that purpose by the Assistant Commissioner having responsibility for that office. Requests may be mailed or delivered in person to: Freedom of Information Act, Chief, Disclosure Law Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

(b) Field Offices—Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records maintained by the Office of Investigations will be made by the Special Agent in Charge in whose office the records are maintained. Initial determinations of records maintained in Customs Ports of Entry as to whether or not to grant requests for records will be made by the Port Director of the Customs Service Port having jurisdiction over the Port of Entry in which the records are maintained. Requests may be mailed or faxed to or delivered personally to the respective Special Agents in Charge or Port Directors of the Customs Service Ports at the following locations:

Offices of Special Agents in Charge (SACS)

Atlanta—SAC

1691 Phoenix Blvd., Suite 250, Atlanta, Georgia 30349, Phone (770) 994–2230, FAX (770) 994–2262

Detroit—SAC

McNamara Federal Building, 477 Michigan Avenue, Room 350, Detroit, Michigan 48226–2568, Phone (313) 226–3166, FAX (313) 226–6282

Baltimore—SAC

40 South Gay Street, 3rd Floor Baltimore, Maryland 21202, Phone (410) 962–2620, FAX (410) 962–3469

El Paso—SAC

9400 Viscount Blvd., Suite 200, El Paso, Texas 79925, Phone (915) 540–5700, FAX (915) 540–5754

Boston—SAC

10 Causeway Street, Room 722, Boston, MA 02222–1054, Phone (617) 565–7400, FAX (617) 565–7422

Houston—SAC

4141 N. Sam Houston Pkwy, E., Houston, Texas 77032, Phone (281) 985–0500, FAX (281) 985–0505

Buffalo—SAC

111 West Huron Street, Room 416, Buffalo, New York 14202, Phone (716) 551–4375, FAX (716) 551–4379

Los Angeles—SAC

300 South Ferry St., Room 2037, Terminal Island, CA 90731, Phone (310) 514–6231, FAX (310) 514–6280

Chicago—SAC

610 South Canal Street, Room 1001, Chicago, Illinois 60607, Phone (312) 353–8450, FAX (312) 353–8455

Miami—SAC

8075 NW 53rd Street, Scranton Building, Miami, Florida 33166, Phone (305) 597–6030, FAX (305) 597–6227

Denver—SAC

115 Inverness Drive, East, Suite 300, Englewood, CO 80112–5131, Phone (303) 784–6480, FAX (303) 784–6490

New Orleans—SAC

423 Canal Street, Room 207, New Orleans, LA 70130, Phone (504) 670–2416, FAX (504) 589–2059

New York—SAC

6 World Trade Center, New York, New York 10048–0945, Phone (212) 466–2900, FAX (212) 466–2903

San Juan—SAC

#1, La Puntilla Street, Room 110, San Juan, PR 00901, Phone (787) 729–6975 FAX (787) 729–6646

San Antonio—SAC

10127 Morocco, Suite 180, San Antonio, Texas 78216, Phone (210) 229–4561, FAX (210) 229–4582

Seattle—SAC

1000—2nd Avenue, Suite 2300, Seattle, Washington, 98104, Phone (206) 553–7531, FAX (206) 553–0826

San Diego—SAC

185 West ''F'' Street, Suite 600, San Diego, CA 92101, Phone (619) 557–6850, FAX (619) 557–5109

Tampa—SAC

2203 North Lois Avenue, Suite 600, Tampa, Florida 33607, Phone (813) 348–1881, FAX (813) 348–1871

San Francisco—SAC

1700 Montgomery Street, Suite 445, San Francisco, CA 94111, Phone (415) 705–4070, FAX (415) 705–4065

Tucson—SAC

555 East River Road, Tucson, Arizona 85704, Phone (520) 670–6026, FAX (520) 670–6233

Customs Service Ports

Anchorage: 605 West Fourth Avenue Anchorage, AK 99501. Phone: (907) 271–2675; FAX: (907) 271–2684.

Minneapolis: 110 South Street Minneapolis, MN 55401. Phone: (612) 348–1690; FAX: (612) 348–1630.

Baltimore: 200 St. Paul Place Baltimore, MD 21202. Phone: (410) 962–2666; FAX: (410) 962–9335.

Mobile: 150 North Royal Street Mobile, AL 36602. Phone: (205) 441–5106; FAX: (205) 441–6061.

Blaine: 9901 Pacific Highway Blaine, WA 98230. Phone: (360) 332–5771; FAX: (360) 332–4701.

New Orleans: 423 Canal Street New Orleans, LA 70130. Phone: (504) 589–6353; FAX: (504) 589–7305.

Boston: 10 Causeway Street Boston, MA 02222–1059. Phone: (617) 565–6147; FAX: (617) 565–6137.

New York: 6 World Trade Center New York, NY 10048. Phone: (212) 466–4444; FAX: (212) 455–2097.

Buffalo: 111 West Huron Street Buffalo, NY 14202–22378. Phone: (716) 551–4373; FAX: (716) 551–5011.

New York-JFK Area: Building #77 Jamaica, NY 11430. Phone: (718) 553–1542; FAX: (718) 553–0077.

Champlain: 35 West Service Road Rts. 1 & 9 South Champlain, NY 12919. Phone: (518) 298–8347; FAX: (518) 298–8314.

New York-NY/Newark Area: Hemisphere Center, Newark, NJ 07114. Phone: (201) 645–3760; FAX: (201) 645–6634.

Charleston: 200 East Bay Street Charleston, SC 29401. Phone: (803) 727–4296; FAX: (803) 727–4043.

Nogales: 9 North Grand Avenue Nogales, AZ 85621. Phone: (520) 287–1410; FAX: (520) 287–1421.

Charlotte: 1801–K Cross Beam Drive Charlotte, NC 28217. Phone: (704) 329–6101; FAX: (704) 329–6103.

Norfolk: 200 Granby Street Norfolk, VA 23510. Phone: (804) 441–3400; FAX: (804) 441–6630.

Charlotte/Amalie: Main Post OFC-Sugar Estate St. Thomas, VI 00801. Phone: (809) 774–2511; FAX: (809) 776–3489.

Pembina: PO Box 610 Pembina, ND 58271. Phone: (701) 825–6201; FAX: (701) 825–6473.

Chicago: 610 South Canal Street Chicago, IL 60607. Phone: (312) 353–6100; FAX: (312) 353–2337.

Philadelphia: 2nd & Chestnut Streets Philadelphia, PA 19106. Phone: (215) 597–4605; FAX: (215) 597–2103.

Cleveland: 56 Erieview Plaza Cleveland, OH 44114. Phone: (216) 891–3804; FAX: (216) 891–3836.

Portland, Oregon: 511 NW Broadway Portland, OR 97209. Phone: (503) 326–2865; FAX: (503) 326–3511.

Dallas/Fort Worth: PO Box 61905 Dallas/Fort Worth Airport, TX 75261. Phone: (972) 574–2170; FAX: (972) 574–4818.

Providence: 49 Pavilion Avenue Providence, RI 02905. Phone: (401) 941–6326; FAX: (401) 941–6628.

Denver: 4735 Oakland Street Denver, CO 80239. Phone: (303) 361–0715; FAX: (303) 361–0722.

San Diego: 610 West Ash Street San Diego, CA 92188. Phone: (619) 557–6758; FAX: (619) 557–5314.

Detroit: 477 Michigan Avenue Detroit, MI 48226. Phone: (313) 226–3178; FAX: (313) 226–3179.

San Francisco: 555 Battery Avenue San Francisco, CA 94111. Phone: (415) 744–7700; FAX: (415) 744–7710.

Duluth: 515 West 1st Street Duluth, MN 55802–1390. Phone: (218) 720–5201; FAX: (218) 720–5216.

San Juan: #1 La Puntilla San Juan, PR 00901. Phone: (809) 729–6965; FAX: (809) 729–6978.

El Paso: 9400 Viscount Boulevard El Paso, TX 79925. Phone: (915) 540–5800; FAX: (915) 540–3011.

Savannah: 1 East Bay Street Savannah, GA 31401. Phone: (912) 652–4256; FAX: (912) 652–4435.

Great Falls: 300 2nd Avenue South Great Falls, MT 59403. Phone: (406) 453–7631; FAX: (406) 453–7069.

Seattle: 1000 2nd Avenue Seattle, WA 98104–1049. Phone: (206) 553–0770; FAX: (206) 553–2970.

Honolulu: 335 Merchant Street Honolulu, HI 96813. Phone: (808) 522–8060; FAX: (808) 522–8060.

St. Albans: P.O. Box 1490 St. Albans, VT 05478. Phone: (802) 524–7352; FAX: (802) 527–1338.

Houston/Galveston: 1717 East Loop Houston, TX 77029. Phone: (713) 985–6712; FAX: (713) 985–6705.

St. Louis: 4477 Woodson Road St. Louis, MO 63134–3716. Phone: (314) 428–2662; FAX: (314) 428–2889.

Laredo/Colombia: P.O. Box 3130 Laredo, TX 78044. Phone: (210) 726–2267; FAX: (210) 726–2948.

Tacoma: 2202 Port of Tacoma Road, Tacoma, WA 98421. Phone: (206) 593–6336; FAX: (206) 593–6351.

Los Angeles: 300 South Ferry Street Terminal Island, CA 90731. Phone: (310) 514–6001; FAX: (310) 514–6769.

Tampa: 4430 East Adamo Drive Tampa, FL 33605. Phone: (813) 228–2381; FAX: (813) 225–7309.

Miami Airport: 6601 West 25th Street Miami, FL 33102–5280. Phone: (305) 869–2800; FAX: (305) 869–2822.

Washington, DC: P.O. Box 17423 Washington, DC. 20041. Phone: (703) 318–5900; FAX: (703) 318–6706.

Milwaukee: P.O. Box 37260 Milwaukee, WI 53237–0260. Phone: (414) 571–2860; FAX: (414) 762–0253.

(c) All such requests should be conspicuously labeled on the face of the envelope, ''Freedom of Information Act Request'' or ''FOIA Request''.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) will be made by the Assistant Commissioner of Customs (Office of Regulations and Rulings), or his designee, and all such appeals should be mailed, faxed (202/927–1873) or personally delivered to the United States Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. If possible, a copy of the initial letter of determination should be attached to the appeal.

5. *Delivery of process.* Service of process will be received by the Chief Counsel, United States Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

Appendix D—United States Secret Service

1. *In general.* This appendix applies to the United States Secret Service.

2. *Public reading room.* The United States Secret Service will provide a room on an ad hoc basis when necessary. Contact the Disclosure Officer, Room 720, 1800 G Street, NW., Washington, DC 20223 to make appointments.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the United States Secret Service will be made by the Freedom of Information and Privacy Acts Officer, United States Secret Service. Requests may be mailed or delivered in person to: Freedom of Information Act Request, FOIA and Privacy Acts Officer, U.S. Secret Service, Room 720, 1800 G Street, NW., Washington, DC 20223.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the United States Secret Service will be made by the Deputy Director, United States Secret Service. Appeals should be addressed to: Freedom of Information Appeal, Deputy Director, U.S. Secret Service, Room 800, 1800 G Street, NW., Washington, DC 20223.

5. *Delivery of Process.* Service of process will be received by the United States Secret Service Chief Counsel at the following address: Chief Counsel, U.S. Secret Service, Room 842, 1800 G Street, NW., Washington, DC 20223.

Appendix E—Bureau of Alcohol, Tobacco and Firearms

1. *In general.* This appendix applies to the Bureau of Alcohol, Tobacco and Firearms.

2. *Public reading room.* The Bureau of Alcohol, Tobacco and Firearms will make materials available for review on an ad hoc basis when necessary. Contact the Chief, Disclosure Division, Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the Bureau of Alcohol, Tobacco, and Firearms will be made by the Chief, Disclosure Division, Office of Assistant Director (Liaison and Public Information) or the delegate of such officer. Requests may be mailed or delivered in person to: Freedom of Information Act Request, Chief, Disclosure Division, Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the Bureau of Alcohol,

Tobacco and Firearms will be made by the Assistant Director, Liaison and Public Information, Bureau of Alcohol, Tobacco, and Firearms or the delegate of such officer.

Appeals may be mailed or delivered in person to: Freedom of Information Appeal, Assistant Director, Liaison and Public Information, Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

5. *Delivery of process.* Service of process will be received by the Director of the Bureau of Alcohol, Tobacco, and Firearms at the following location: Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, Attention: Chief Counsel.

Appendix F—Bureau of Engraving and Printing

1. *In general.* This appendix applies to the Bureau of Engraving and Printing.

2. *Public reading room.* Contact the Disclosure Officer, 14th and C Streets, SW., Washington, DC 20228, to make an appointment.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the Bureau of Engraving and Printing will be made by the Assistant to the Director. Requests may be mailed or delivered in person to: Freedom of Information Act Request, Disclosure Officer, (Assistant to the Director), Room 112–M, Bureau of Engraving and Printing, Washington, DC 20228.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the Bureau of Engraving and Printing will be made by the Director of the Bureau of Engraving and Printing or the delegate of the Director. Appeals may be mailed or delivered in person to: Freedom of Information Appeal, Director, Bureau of Engraving and Printing, 14th and C Streets, SW., Room 119–M, Washington, DC 20228.

5. *Delivery of process.* Service of process will be received by the Chief Counsel or the delegate of such officer at the following location: Chief Counsel, Bureau of Engraving and Printing, 14th and C Streets, SW., Room 104–24 M, Washington, DC 20228.

Appendix G—Financial Management Service

1. *In general.* This appendix applies to the Financial Management Service.

2. *Public reading room.* The public reading room for the Financial Management Service is maintained at the following location: Library, Main Treasury Building, 1500 Pennsylvania Avenue NW., Washington, DC 20220. For building security purposes, visitors are required to make an appointment by calling 202/622–0990.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) whether to grant requests for records will be made by the Disclosure Officer, Financial Management Service. Requests may be mailed or delivered in person to: Freedom of Information Request, Disclosure Officer, Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) will be made by the Commissioner, Financial Management Service. Appeals may be mailed to: Freedom of Information Appeal (FOIA), Commissioner, Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

Appeals may be delivered personally to the Office of the Commissioner, Financial Management Service, 401 14th Street, SW., Washington, DC.

5. *Delivery of process.* Service of process will be received by the Commissioner, Financial Management Service, and shall be delivered to: Commissioner, Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, DC 20227.

Appendix H—United States Mint

1. *In general.* This appendix applies to the United States Mint.

2. *Public reading room.* The U.S. Mint will provide a room on an ad hoc basis when necessary. Contact the Freedom of Information/Privacy Act Officer, United States Mint, Judiciary Square Building, 7th floor, 633 3rd Street, NW., Washington, DC 20220.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the United States Mint will be made by the Freedom of Information/Privacy Act Officer, United States Mint. Requests may be mailed or delivered in person to: Freedom of Information Act Request, Freedom of Information/Privacy Act Officer, United States Mint, Judiciary Square Building, 7th Floor, 633 3rd Street, NW., Washington, DC 20220.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the United States Mint will be made by the Director of the Mint. Appeals made by mail should be addressed to: Freedom of Information Appeal, Director, United States Mint, Judiciary Square Building, 7th Floor, 633 3rd Street, NW., Washington, DC 20220.

5. *Delivery of process.* Service of process will be received by the Director of the Mint and shall be delivered to: Chief Counsel, United States Mint, Judiciary Square Building, 7th Floor, 633 3rd Street, NW., Washington, D.C. 20220.

Appendix I—Bureau of the Public Debt

1. *In general.* This appendix applies to the Bureau of the Public Debt.

2. *Public reading room.* The public reading room for the Bureau of the Public Debt is maintained at the following location: Library, Main Treasury Building, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. For building security purposes, visitors are required to make an appointment by calling 202/622–0990.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records will be made by the Disclosure Officer of the Bureau of the Public Debt. Requests may be sent to: Freedom of Information Act Request, Disclosure Officer, Bureau of the Public Debt, Department of the Treasury, 999 E Street, NW., Room 500, Washington, D.C. 20239–0001.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the Bureau of the Public Debt will be made by the Commissioner of the Public Debt. Appeals may be sent to: Freedom of Information Appeal, Commissioner of the Public Debt, Department of the Treasury, 999 E Street, NW., Room 500, Washington, DC 20239–0001.

5. *Delivery of process.* Service of process will be received by the Chief Counsel, Bureau of the Public Debt, or the delegate of such officer, and shall be delivered to the following location: Chief Counsel's Office, Bureau of the Public Debt, Room 501, 999 E Street, NW., Washington, DC 20239–0001, or Bureau of the Public Debt, 200 Third Street, Room G–15, Parkersburg, WV 26106–1328.

Appendix J—Office of the Comptroller of the Currency

1. *In general.* This appendix applies to the Office of the Comptroller of the Currency.

2. *Public reading room.* The Office of the Comptroller of the Currency will make materials available through its Public Information Room at 250 E Street, SW., Washington, DC 20219.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the Office of the Comptroller of the Currency will be made by the Disclosure Officer or the official so designated. Requests may be mailed or delivered in person to: Freedom of Information Act Request, Disclosure Officer, Communications Division, 3rd Floor, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the Office of the Comptroller of the Currency will be made by the Chief Counsel or delegates of such person. Appeals made by mail should be addressed to: Communications Division, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Appeals may be delivered personally to the Communications Division, Comptroller of the Currency, 250 E Street, SW., Washington, DC.

5. *Delivery of process.* Service of process will be received by the Director, Litigation Division, Comptroller of the Currency, and shall be delivered to such officer at the following location: Litigation Division, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Appendix K—Federal Law Enforcement Training Center

1. *In general.* This apppendix applies to the Federal Law Enforcement Training Center.

2. *Public reading room.* The public reading room for the Federal Law Enforcement Training Center is maintained at the following location: Library, Building 262, Federal Law Enforcement Training Center, Glynco, GA 31524.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records will be made by the Chief, Management Analysis Division, Federal Law Enforcement Training Center. Requests made by mail should be addressed to: Freedom of Information Act Request, Freedom of Information Act Officer, Federal Law Enforcement Training Center, Department of the Treasury, Building 94, Glynco, GA 31524.

Requests may be delivered personally to the Management Analysis Division, Federal Law Enforcement Training Center, Building 94, Glynco, GA.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the consolidated Federal Law Enforcement Training Center will be made by the Director, Federal Law Enforcement Training Center. Appeals may be mailed to: Freedom of Information Appeal, Federal Law Enforcement Training Center, Department of the Treasury, Building 94, Glynco, GA 31524.

5. *Delivery of process.* Service of process will be received by the Legal Counsel of the Federal Law Enforcement Training Center, or his delegate, and shall be delivered to such officer at the following location: Legal Counsel, Federal Law Enforcement Training Center, Department of the Treasury, Building 94, Glynco, GA 31524.

Appendix L—Office of Thrift Supervision

1. *In general.* This appendix applies to the Office of Thrift Supervision (OTS). OTS regulatory handbooks and other publications are available for sale. Information may be obtained by calling the OTS Order Department at 301/645–6264. OTS regulatory handbooks and other publications may be purchased by forwarding a request, along with a check to: OTS Order Department, PO Box 753, Waldorf, MD 20604 or by calling 301/645–6264 to pay by VISA or MASTERCARD.

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

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the Office of Thrift Supervision will be made by the Director, OTS Dissemination Branch. Requests for records should be addressed to: Freedom of Information Request, Manager, Dissemination Branch, Records Management & Information Policy Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Requests for records may be delivered in person to: Public Reference Room, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the Office of Thrift Supervision will be made by the Director, Records Management & Information Policy, Office of Thrift Supervision, or their designee. Appeals made by mail should be addressed to: Freedom of Information Appeal, Director, Records Management & Information Policy Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Appeals may be delivered in person to: Public Reference Room, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC.

5. *Delivery of process.* Service of process will be received by the Corporate Secretary of the Office of Thrift Supervision or their designee and shall be delivered to the following location: Corporate Secretary, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

[FR Doc. 00–16446 Filed 6–29–00; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100, 110, and 165

[CGD1–99–194]

Temporary Regulations: OPSAIL MAINE 2000, Portland, ME

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary regulations, including a regulated area, safety zone and anchorage grounds during OPSAIL MAINE 2000 events to be held between July 28 and 30, 2000 in the port of Portland, Maine. These regulations are necessary to promote the safe navigation of vessels, and the safety of life and property during the heavy volume of vessel traffic expected during this event.

DATES: This rule is effective from July 28, 2000 until July 30, 2000.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD1–99–194 and are available for inspection and copying at the Coast Guard Marine Safety Office, 103 Commercial St. Portland, Maine 04101–4726, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant E. Doucette, Chief of Response and Planning, Marine Safety Office, Portland at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 17, 2000, the Coast Guard published a Notice of Proposed Rule Making (NPRM) entitled Temporary Regulations: Opsail Maine 2000, Portland, Maine in the **Federal Register**, Volume 65, Page 14498. The Coast Guard received 3 letters commenting on the proposed rule. One letter suggested a public hearing be held. For reasons set out below, a public hearing was not held.

Background and Purpose

OPSAIL Maine 2000, Inc. is sponsoring the OPSAIL Maine 2000 Parade of Tall Ships as well as a fireworks display. These events are scheduled to take place between July 28th and 30th 2000 in the Port of Portland and surrounding waters. The Coast Guard anticipates up to 1,000 spectator craft for these events. These regulations create temporary anchorage regulations, vessel movement controls, and safety zones. The regulations are in effect at various times in Portland Harbor between July 28–30, 2000. The expected vessel congestion due to the large number of participating and spectator vessels poses a significant threat to the safety of life and the safety of the port. These rules provide for the safety of life on navigable waters and promotes maritime safety and protects participants and spectators during this event.

Discussion of Rule

These regulations create temporary anchorage regulations and vessel movement controls. Special local regulations will be in effect for parts of Portland Harbor for the period beginning at 11 a.m. on Friday, July 28, and ending at 4 p.m. on Friday, July 28. The safety of parade participants and spectators will require that spectator craft and all other traffic be kept at a safe distance from participating tall ships and vessels. No vessel will be permitted to move within the regulated area during that time without permission from the Captain of the Port. This is required to ensure the safety of both participating and spectator vessels during the Parade of Sail. Normal port operations will resume within the area following the Parade of Sail.

These regulations temporarily suspend existing anchorage areas, and establish new areas within the port to provide spectator viewing areas and maintain a clear parade route for participating vessels. The Parade of Sail will begin at Portland Head Light, and proceed along the main channel into Portland Harbor. The safety of parade participants and spectators require that all vessels remain clear of the main channel while the participating vessels are on the parade route.

These regulations also establish a safety zone around a pyrotechnics barge from which fireworks will be launched. An area within a 1500-foot radius

around the vessel is designated as a safety zone. This safety zone is needed to protect the maritime public from possible hazards associated with the launching of fireworks in Portland Harbor.

Discussion of Comments and Changes

The Coast Guard received three comments during the comment period.

One comment concerned access by residents to Cushing Island and by commercial ferries and water taxis to Cushing Island. The writer cited 33 CFR § 100.CGD1–194(c)(2) of the Notice of Proposed Rule Making, which provides some pre-arranged movement of commercial vessels, and requested to meet and discuss access issues. A meeting was held on June 12, 2000 at the Marine Safety Office in Portland with those inspected and uninspected small passenger vessel operators most affected, including the author of this comment, to coordinate some limited and controlled harbor movements prior to and in the early stages of, the timeframe for the regulated area. The Coast Guard recognizes that service to inhabited islands in Casco Bay will be disrupted. The specifics of these temporary regulations are designed to minimize interference to this service, while maintaining a necessary level of safety.

The Coast Guard received one comment regarding small passenger vessels engaged in scenic cruises of the waters affected by the regulated area. The author of the comment was concerned that his business would be severely impacted by the closure of the main channel during the OPSAIL Parade. A follow-up telephone conversation with the author of the comment indicated that he believed the regulated area was for the entire four days of OPSAIL, rather than the limited 11 a.m. to 4 p.m. period on July 28, 2000 set aside for the parade. Small passenger vessel operators are not required by this rule to remain at the dock. These vessels may operate outside of the regulated area during the Parade of Sail, or may anchor in designated spectator areas along with other spectator craft.

The final comment received discussed the potential impact to lobstermen and requested a public hearing. In a follow-up conversation, the author of the comment indicated that he believed that the regulated area was for the entire four days of the OPSAIL marine events. The regulated area established for the Parade of Sail is for a limited duration and a limited area of the harbor. Once this was clarified, the author's concerns were alleviated. In addition, the local Coast Guard is working to, and will continue to work to coordinate efforts between OPSAIL Maine organizers and the local fishermen to address the concerns of fishermen.

The Coast Guard has discussed and made available the proposed regulations to the local Port Safety Forums and Area Committee. The Marine Safety Office hosted Small Passenger Vessel Operator meetings during which the NPRM was discussed. In March these temporary regulations were explained and by April were provided to the public at various ''fisherman gatherings'', via facsimile, e-mail and web page postings. For these reasons, the limited number of written comments received and the special meeting held on June 12th, the Coast Guard feels that a public hearing is not necessary.

The coordinates identifying the aids to navigation positions defining the boundary of Spectator Anchorage E have been changed from those listed in the NPRM. The actual aids to navigation cited in the NPRM are correct and form the boundary of the anchorage. This change merely corrects the coordinates of the aids and has no regulatory effect.

Regulated Area

A regulated area in Portland Harbor will be in effect from 11 a.m. to 4 p.m. on July 28, 2000. This regulated area is needed to protect the maritime public and participating vessels from possible hazards to navigation associated with a parade of tall ships transiting the waters of Portland Outer Harbor into port, and a large number of spectator craft anchored in close proximity throughout the duration of these events. This regulated area includes vessel anchoring and operating restrictions, including the restriction of vessel movement within the area. This Regulated Area covers the waters of Portland Outer Harbor, Main Harbor and vicinity. It includes the following temporary anchorages established under 33 CFR § 110.T136 created under this rule: Anchorage B, Anchorage C, Spectator Anchorage D along the east shore of South Portland, and Spectator Anchorage E off the southeast shore of Cushing Island. Following the tall ship parade, Portland Harbor will reopen in sequence with the movement and mooring of the final flotilla of tall ships. After the final flotilla of tall ships has passed Anchorage B, vessel operators anchored in the anchorage areas may depart for locations outside Portland Harbor. This regulated area is effective from 11 a.m. until 4 p.m. on July 28, 2000.

Anchorage Regulations

The Coast Guard has established temporary Anchorage Regulations for participating OPSAIL MAINE 2000 ships and spectator craft. The Anchorage regulations in 33 CFR § 110.132 are temporarily suspended by this regulation and new Anchorage Grounds and regulations are temporarily established.

The anchorage regulations temporarily establish Anchorage Grounds for spectator vessel use only. They restrict all other vessels from using these Anchorage Grounds during a portion of the OPSAIL MAINE 2000 event. Anchorage B will contain the official reviewing vessel. Anchorage C is designated for small vessel temporary anchorages. Additionally, Spectator Anchorage D is designated along the eastern shore of South Portland in the Outer Harbor, and Spectator Anchorage E is designated on the southeast shore of Cushing Island. These anchorages are needed to provide viewing areas for spectator vessels while maintaining a clear parade route for the participating OPSAIL MAINE 2000 vessels and to protect boaters and spectator vessels from the hazards associated with a parade of tall ships transiting in close proximity in the waters of Portland Harbor. These regulations are effective from 11 a.m. until 4 p.m. on July 28, 2000.

Safety Zones

The Coast Guard has established a safety zone in Portland Harbor for a fireworks display, that will be in effect on July 28, 2000. In the case of inclement weather, the fireworks display will be held on either July 29 or 30, 2000 and the safety zone would be in effect on one of those dates. The safety zone is needed to protect the maritime public from possible hazards associated with the launching of fireworks in Portland Harbor. The safety zone covers a 1500-foot radius around a barge located in Anchorage A used for the fireworks display. This regulation is in effect from 9 p.m. until 11 p.m. on July 28–30, 2000.

Regulatory Evaluation

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

Due to the short duration of these marine events and fireworks events, the limited areas and the advance notice provided to the maritime community,

the Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary.

The primary impact of this rule will be on vessels wishing to transit the affected waterways during the Parade of Sail on July 28, 2000. Although this rule prevents traffic from transiting a portion of Portland Harbor, that restriction is limited in duration, affects only a limited area and has been will publicized, allowing mariners to make alternative plans for operating in the affected area. Moreover, the magnitude of the event itself would hamper or prevent normal transit of the waterway, even absent these regulations, which are designed to ensure the Parade is conducted in a safe and orderly fashion.

Small Entities

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

Because it expects the impact of this rule to be so minimal, the Coast Guard certifies under section 601(b) of the Regulatory Flexibility Act (5 U.S.C. 601*et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate in portions of Portland Harbor. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: the restrictions are of limited duration, affect only limited areas, and have been well publicized and coordinated, allowing affected mariners to make alternative plans for operating in the area.

Assistance for Small Entities

In accordance with Sec. 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking process. No requests for assistance in understanding this rule were received.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

We have considered the environmental impact of this rule and concluded that, under Figure 2–1, paragraph 34 (f), (g) and (h), of Commandant Instruction M16475.1C, it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 100

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

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard will amend 33 CFR Parts 100, 110, and 165 as follows:

PART 100—MARINE EVENTS

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

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

2. Add Temporary § 100.35 T–01–194 to read as follows:

§ 100.35T–01–194 Regulated Area, Main Harbor, Portland, Maine.

(a) *Regulated Area.* A regulated area is established in the waters of Portland Harbor, Outer Harbor, Main Harbor and vicinity within the following boundaries: east of the Casco Bay Bridge in the Fore River; east of the line drawn from Fish Point at 43°39.9′ N–70°14.2′ W to Back Cove Approach Buoy No. 3 (LLNR 7845) at 43°40.2′ N–70°14.1′ W; south of the line thence drawn to Back Cove Approach Buoy No. 4 (LLNR 7850) at 43°40.1′ N–70°13.3′ W; south-southwest of the line thence drawn to Back Cove Approach Buoy No. 2 (LLNR 7850) at 43°40.1′ N–70°13.3′ W; south-southwest of the line thence drawn to Casco Bay Channel Buoy No. 2 (LLNR 72535) at 43°39.8′ N–70°12.8′ W; south-southwest of the line thence drawn to House Island Buoy 1 (LLNR 7220) at 43°39.3′ N–70°12.3′ W; west of the line thence drawn to the northernmost of Cushing Island 43°38.8′ N–70°12.1′ W; west of the line from the easternmost point of Cushing Island at 43°38.7′ N–70°11.4′ W to Ram Island Ledge (LLNR 7575) at 43°37.9′ N–70°11.3′ W; north of the line thence drawn to Portland Head

Light (LLNR 7565) at 43°37.4′ N–70°12.5′ W; thence along the shore of South Portland back to the Casco Bay Bridge. All coordinates are NAD 1983.

(b) *Enforcement dates:* This regulation will be enforced from 11 a.m. until 4 p.m. on July 28, 2000.

(c) *Special Local Regulations.*

(1) No vessel except OPSAIL MAINE 2000 participating vessels and their assisting tugs, spectator vessels, and those vessels exempt from the regulations in this action, may enter or navigate within the Regulated Area, unless specifically authorized by the Coast Guard Captain of the Port, Portland, Maine or his on-scene representative.

(2) Commercial vessels which need to transit the Regulated Area, and are not going to a spectator vessel anchorage, must obtain permission from the Coast Guard Captain of the Port, Portland, Maine or his on-scene representative, prior to entering the Regulated Area.

(3) Spectator vessels within the Regulated Area shall remain in designated anchorages during the effective period unless specifically authorized by the Coast Guard Captain of the Port, Portland, or his on-scene representative.

(4) Spectator vessels transiting the Regulated Area must do so at a no wake speed, or at speeds not to exceed 5 knots, whichever is less.

(5) Not withstanding paragraph (c)(1) of this section, no vessel other than OPSAIL MAINE 2000, their assisting tugs, and enforcement vessels, may enter or navigate within the boundaries of the main shipping channel within the Regulated Area unless they are specifically authorized to do so by the Coast Guard Captain of the Port, Portland, Maine or his on-scene representative. Authorization may be obtained by contacting Coast Guard Group Portland on channel 16 VHF–FM. Any vessel authorized to enter the Regulated Area during the Parade of Tall Ships must not, under any circumstances, cross through the parade, or maneuver alongside within 100 yards of any OPSAIL MAINE 2000 vessel.

(6) No vessel is permitted to anchor in the main shipping channel at any time. Vessels which need to anchor to maintain position will only do so in designated temporary anchorage areas.

(7) All persons and vessels shall comply with the instructions of on-scene Coast Guard patrol personnel. On-scene patrol personnel include commissioned, Warrant and Petty Officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, or local law enforcement vessels.

PART 110—ANCHORAGE GROUNDS

3. The authority citizen for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

4. From July 28 through July 30, 2000 § 110.32 is suspended and new § 110.T01–136 is added as follows:

§ 110.T01–136 Portland Harbor, ME.

(a) *The anchorages.* All anchorages in this paragraph are effective as specified. Vessel operators using the anchorages in this paragraph must comply with the general operational requirements specified in paragraph (c) of this section. All coordinates are NAD 1983.

(1) *Anchorage B.*

(i) That area bounded by the following points; 43°39.5′ N-70°13.25′ W (Fort Gorges Island Ledge Buoy 4. LLNR 7685); 43°39.8′ N-70°12.8′ W; 43°39.4′ N–70°12.4′ W; 43°39.1′ N–70°12.9′ W (NAD 1983).

(ii) Anchorage B is intended for general purposes, but especially for use by oil tankers and other large deep-draft ships entering harbor at night and intending to proceed to the dock allotted at daylight the following morning or as soon as practicable. This area is also to be used for quarantine anchorage. Vessels must be so anchored in this area as to leave at all times an open usable channel at least 100 feet wide for passage of ferry and other boats between Portland and islands in Luckse Sound and Hussey Sound. Any vessels anchored in this area shall be ready to move on short notice when ordered to do so by the Captain of the Port, or on scene Coast Guard patrol personnel.

(2) *Anchorage C.*

(i) That area bounded by the following points: the eastern most point on House Island 43°39.2′ N–70°12.4′ W, to the point on Cushing Island at 43°38.8′ N–70°12.1′ W; thence along the western shore of Cushing Island to its southernmost point at 43°38.1′ N–70°12.4′ W; to Maine Approach Lighted Bell Buoy ''12'', (LLNR 7580) at 43°38.0′ N–70°12.5′ W; to Fort Scammel Point Light 2 (LLNR 7605) at 43°38.9′ N–70°12.9′ W; thence along the south-eastern shoreline to the beginning. (All positions NAD 1983.)

(ii) This anchorage is intended for use by small vessels and for temporary anchorages.

(3) *Spectator Anchorage D.*

(i) That area bound by the following points: Spring Point Ledge Light (LLNR 7610) at 43°39.1′ N–70°13.5′ W (NAD 1983); to Portland Head Light, (LLNR 7565) 43°37.4′ N–70°12.5′ W (NAD 1983); thence along the shoreline of South Portland to the point of beginning. (All positions NAD 1983.)

(ii) This anchorage is intended for use by small vessels and for temporary anchorages.

(4) *Spectator Anchorage E.*

(i) That area bounded by the following points: the eastern most point of Cushing Island at 43°38.7′ N–70°11.3′ W; to Ram Island Ledge Light (LLNR 7575) at 43°37.9′ N–70°11.3′ W; to the floating aid to navigation Maine Approach Lighted Bell Buoy ''12'', (LLNR 7580) at 43°38.0′ N–70°12.5′ W; to the southern most point of Cushing Island; thence along the south-eastern shore to the point of beginning. (All positions NAD 1983.)

(ii) This anchorage is intended for use by small vessels and for temporary anchorages.

(b) *Enforcement dates*: This section will be enforced from 11 a.m. until 4 p.m. on July 28, 2000.

(c) *Regulations.* Vessel operators using any of the anchorages established in this section shall:

(i) ensure their vessels remain safety in position under all prevailing conditions.

(ii) Comply as directed by on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, or local law enforcement vessels.

(iii) Vacate anchorages after termination of the effective period for those areas.

(iv) Not leave vessels unattended in any anchorage or spectator area at any time.

(v) Not tie off to any buoy.

(vi) Not maneuver between anchored vessels.

(vii) Not nest or tie off to other vessels in that anchorage or spectator area.

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

5. The authority citation for Part 165 continues to read:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(G), 6.04–1, 6.04–6, and 160.5.

6. Add new § 165.T01–195 to read as follows:

§ 165.T01–195 Safety Zone: OPSAIL Maine 2000 Fireworks Display, Portland Harbor, Portland, ME.

(a) *Location.* The following area is a safety zone: All waters in a 1500-foot radius of a pyrotechnics barge located at approximate position 43°40′07″ N–70°13′45″ W (NAD 1983).

(b) *Effective dates.* This regulation is effective from 9 p.m. until 11 p.m. on July 28, 29 and 30, 2000 respectively.

(c) *Regulations.*

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

(2) Vessel operators must maneuver as directed by on-scene Coast Guard patrol personnel. On scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, or law enforcement vessels.

Dated: June 21, 2000.

R.F. Duncan,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District, Boston, Massachusetts.

[FR Doc. 00–16625 Filed 6–29–00; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–203]

RIN 2115–AA98, AA84, AE46

Temporary Regulations: OPSAIL 2000, Port of New London, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; correction.

SUMMARY: This document corrects a final rule published in the **Federal Register** of June 14, 2000, concerning temporary regulations OPSAIL 2000 events to held at the Port of New London, Connecticut. That document contained inaccurate positions for Safety Zones 1 and 2.

DATES: The correction is effective June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Master Chief K.G. Dolan, Group/MSO Long Island Sound, New Haven, Connecticut, (203) 468–4429.

SUPPLEMENTARY INFORMATION:

Correction

As published, the temporary final rule contains inaccurate latitude and longitude positions and several other positions that need to be corrected.

Correction of Publication

Accordingly, in the publication on June 14, 2000, of the temporary final rule [CGD01–99–203], which is the subject of FR Doc. 00–15009, is corrected as follows:

§ 165.T01–198 Safety Zones: OPSAIL 2000, Port of New London, Connecticut.

1. On page 37282, in the third column, line 63 and on page 37284, in the third column, line 52, the Longitude position ''072°05′8.7″ W'' should read ''072°05′8″ W''.

2. On page 37283, in the first column, line 19 and on page 37285, in the first column, line 7, position ''41°17′38″ N, 072°04′40″ W'' should read ''41°17′6″ N, 072°04′7″ W''.

3. On page 37283, in the first column, line 22, and on page 37285, in the first column, line 10, position ''41°15′38″ N, 072°08′22″ W'' should read, ''41°15′6″ N, 072°08′4″ W''.

4. On page 37283, in the first column, line 23, and on page 37285, in the first column, line 11, the word ''south'' should read ''north''.

5. On page 37283, in the first column, line 24, and on page 37285, in the first column, line 12, ''(LLNR 21065)'' should read ''(LLNR 21075)''

6. On page 37283, in the first column, line 27, and on page 37285, in the first column, line 15, ''bearing 192°T'' should read ''bearing 065°T''.

Dated: June 21, 2000.

R.F. Duncan,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 00–16624 Filed 6–29–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 141

[FRL–6726–1]

RIN 2040–AD06

National Primary Drinking Water Regulations: Public Notification Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: The Environmental Protection Agency published in the **Federal Register** of May 4, 2000, final regulations to revise the public notification requirements that public water systems must follow under the Safe Drinking Water Act. Inadvertently, the May 4 document had several incorrect regulatory citations and other formatting problems. Today's action corrects the regulatory citations and the formatting problems.

DATES: Effective on June 30, 2000.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, contact Carl B. Reeverts at (202) 260–7273 or e-mail: reeverts.carl@epa.gov. Contact the Safe Drinking Water Hotline, toll free (800) 426–4791 for general information about the rule and this correction notice.

SUPPLEMENTARY INFORMATION: The EPA published final public notification regulations in the **Federal Register** of May 4, 2000 (65 FR 25981). Several incorrect citations and formatting errors in the May 4, 2000 document are corrected by today's action. Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for public comment, because today's action only corrects formatting errors and minor citation errors in the final rule published in the **Federal Register** on May 4, 2000 (65 FR 25981). Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B). For the same reasons, EPA is making the provisions of this rule effective upon promulgation, as authorized under section 553(d) of the APA.

I. Corrections to the Regulation

Correction to Part 9 Table

The amendment to part 9 in the May 4 document (65 FR 26021–22) revised the table under § 9.1, OMB approvals under the Paperwork Reduction Act, to insert the OMB Control Number for the new and revised public notification requirements contained in the final public notification rule. The May 4 document inadvertently amended a § 9.1 table that had already been superceded by a separate regulatory action.

Correction to CFR Citations to Conform to New Public Notification Subpart

Amendment 3 of the May 4 document (65 FR 26022) revised references to the public notification regulations in other parts of 40 CFR Part 141 from the existing citation (§ 141.32) to the new Subpart Q. The May 4 document in several places inadvertently included the incorrect CFR citation.

Correction to Incorrect Citation in Amendment 16

Amendment 16 of the May 4 document (65 FR 26035) revised the reporting requirements under the Interim Enhanced Surface Water

Treatment Rule to conform to the revised public notification regulations. The May 4 document included an incorrect citation.

Correct Format in § 141.201–§ 141.210 To Italicize Questions

In accordance with the plain language format of the final public notification regulations, the requirements in the new Subpart Q under § 141.201 to § 141.210 were presented in question and answer format. To make the presentation as clear and easy to read as possible, EPA chose to italicize the questions to highlight the presentation of the requirements. Inadvertently, the May 4 document (65 FR 26035–26039) included some but not all of the questions in italicized form. This notice restores the questions to the italicized form as intended.

Correcting Formatting Errors in Appendix B to Subpart Q

Appendix B to Subpart Q presents the standard health effects language for each regulated contaminant. Public water systems are to include the standard health effects language in their public notices for violations of an MCL or treatment technique requirement. The contaminant list in Appendix B is grouped into the major contaminant categories for ease of reference. Inadvertently, Appendix B in the May 4 document (65 FR 26043–26048) contained formatting errors requiring correction.

A. PART 9—[CORRECTED]

1. On page 26021 in the third column, under the ''Authority'' paragraph, insert a comma between ''1326'' and ''1330''.

2. On page 26021 in the third column, in the third line under amendment 2, ''142.10–142.15'' is corrected to read ''142.10–142.14'' and ''142.15'' is inserted after ''142.10–142.14''.

3. On page 26022 in the first column, in the table in § 9.1, the following corrections are made: a. Under the first column of the table, ''142.14(a)–(e)'' is corrected to read ''142.14(a)–(d)(7)'' and ''142.15(b)–(d)'' is corrected to read ''142.15(b)–(c)(3)''.

b. The entry for 142.16(b)–(e) is removed.

c. New entries are added in numerical order as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control number
* * * * *	
142.14(e)	2040–0090
* * * * *	
142.15(c)(5)–(d)	2040–0090
* * * * *	
142.16(b)–(c)	2040–0090
* * * * *	
142.16(e)	2040–0090

B. INCORRECT CITATIONS ON PAGE 26022 [CORRECTED]

1. On page 26022 in the first column, in the paragraph of citations for amendment 3, the following corrections are made:

a. Insert ''(b)(1)(iii)'' between ''141.133(b)(1)(i)'' and ''(b)(2)'' in the fourth line and insert ''and (d)'' after ''(c)(1)(i)'' in the fifth line.

b. In the fourth line, delete the word ''and'' between ''(b)(3)'' and ''(c)(1)(i)''

c. In the tenth and eleventh lines, ''141.33(c)(2)(ii)'' is corrected to read ''141.133(c)(2)(ii)'' and ''141.133(e)(78)'' is corrected to read ''141.32(e)(78) ''.

C. INCORRECT CITATION ON PAGE 26035 [CORRECTED]

1. On page 26035 in the first column, in the fourth line under § 141.175(c)(2), ''142.173(b)'' is corrected to read ''141.173(b)''.

D. INCORRECT FORM OF TEXT ON PAGES 26035–26039 [CORRECTED]

1. On page 26035, in the third column, the first sentence in § 141.201(b) and (c) is put in italicized form.

2. On page 26036, in the first and second column, the first sentence in § 141.202(a) and (c) is put in italicized form.

3. On page 26036, in the third column, the first sentence in § 141.203(a) is put in italicized form.

4. On page 26037, in the middle column, and on page 26038, in the first column, the first sentence in § 141.204(a) and 141.204(d) are put in italicized form.

5. On page 26038, the first sentence in § 141.205(a), (b), (c), (d) are put in italicized form.

6. On page 26039, the first sentence in §§ 141.206(a) and (b); 141.207(a) and (b); 141.208(a), (b) and (c); 141.209(a) and (b); and 141.210(a) and (b) are put in italicized form.

E. APPENDIX B TO PART 141, SUBPART B [CORRECTED]

1. On pages 26043 through 26047, in the table in Appendix B, the following corrections are made to the column 1 headings:

a. Under the first column of the table on page 26043, insert a new heading between contaminant number 7, ''Cryptosporidium (IESWTR)'', and contaminant number 8, ''Antimony'', titled ''C. Inorganic Chemicals (IOCs):''.

b. Under the first column of the table on page 26044, replace the heading ''C. Lead and Copper Rule:'' with the corrected heading ''D. Lead and Copper Rule:''.

c. Under the first column of the table on page 26044, insert a new heading between contaminant number 24, ''Copper'', and contaminant number 25, ''2,4-D'', titled ''E. Synthetic Organic Chemicals (SOCs):''

d. Under the first column of the table on page 26045, insert a new heading between contaminant number 54, ''Toxaphene'', and contaminant number 55, ''Benzene'', titled ''F. Volatile Organic Chemicals (VOCs):''

e. Under the first column of the table on page 26046, insert a new heading between contaminant number 75, ''Xylenes (total)'' and contaminant number 76, ''Beta/photon emitters'', titled ''G. Radioactive Contaminants:''.

f. Under the first column of the table on page 26046, replace the heading title ''G. Disinfection Byproducts (DBPs), Byproduct Precursers, and Disinfectant Residuals:'' with the corrected heading ''H. Disinfection Byproducts (DBPs), Byproduct Precursers, and Disinfectant Residuals:''

g. Under the first column of the table on page 26047, replace the heading title ''H. Other Treatment Techniques:'' with the corrected heading ''I. Other Treatment Techniques:''

2. On pages 26044, 26045, and 26046, in the table in Appendix B, the following corrections are made to the column 4 standard health effects language text:

a. Under the fourth column on page 26044 for contaminant 24, ''Copper'', the last sentence of the health effects language, ''11D. Synthetic Organic Chemicals (SOCs):'', is removed.

b. Under the fourth column on page 26045 for contaminant 54, ''Toxaphene'', the last sentence of the health effects language, ''11E. Volatile Organic Chemicals (VOCs)'', is removed.

c. Under the fourth column on page 26046 for contaminant 75, ''Xylenes (total)'', the last sentence of the health effects language, ''11F. Radioactive Contaminants:'', is removed.

3. Under the first column on page 26048, the Appendix B—Endnotes, remove footnote 11 and renumber footnotes 12–22 as 11–21.

II. Administrative Requirements

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

This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by Section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the May 4, 2000 **Federal Register** notice.

The Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of June 30, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C.804(2).

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 141

Environmental protection, Chemicals, Indian-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: June 21, 2000.

J. Charles Fox,

Assistant Administrator, Office of Water.

[FR Doc. 00–16363 Filed 6–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 141, and 142

[FRL–6726–3]

OMB Approval Numbers for the Primacy Rule Under the Paperwork Reduction Act and Clarification of OMB Approval for the Consumer Confidence Report Rule

AGENCY: Environmental Protection Agency.

ACTION: Final rule; technical amendment.

SUMMARY: EPA is confirming that the Office of Management and Budget approved information collection requirements for the final rule *National Primary Drinking Water Regulations: Consumer Confidence Report* (Consumer Confidence Report Rule) (August 19, 1998) and the final rule *Revisions to State Primacy Requirements to Implement Safe Drinking Water Act Amendments* (Primacy Rule) (April 28, 1998).

EFFECTIVE DATES: The amendment to 40 CFR 9.1 is effective June 30, 2000. 40 CFR part 141 subpart 0, and 40 CFR 142.16(f) became effective on September 20, 1998, when OMB approved the information collection requirements for the Consumer Confidence Report Rule. 40 CFR 142.11(a)(6) became effective on September 21, 1998, when OMB approved the information collection requirements for the Primacy Rule.

FOR FURTHER INFORMATION CONTACT: For information related to the Consumer Confidence Report Rule, contact Rob Allison, Information Management Branch; Office of Ground Water and Drinking Water; EPA (4606), Ariel Rios Building, 1200 Pennsylvania Ave, NW, Washington, DC 20460; telephone 202–260–9836 or allison.rob@epa.gov. For information related to the Primacy Rule, contact Jennifer Melch; Regulatory Implementation Branch; Office of Ground Water and Drinking Water; EPA (4606), Ariel Rios Building, 1200 Pennsylvania Ave, NW, Washington, DC 20460; telephone (202) 260–7035, or melch.jennifer@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What Does This Correction Do?

This document announces the effective dates of certain Code of Federal Regulations sections which contain information collection requirements. These information collection requirements can be found at in 40 CFR part 141, subpart O, and part 142, § 142.16(f) for the Consumer Confidence Report Rule (63 FR 44511), and in 40 CFR part 142, § 142.11(a)(6) for the Primacy Rule (63 FR 23362).

Under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that is subject to approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

OMB approved the information collection requirements contained in the Consumer Confidence Report Rule on September 20, 1998, and approved the information collection requirements contained in the Primacy Rule on September 21, 1998.

In the December 28, 1998 **Federal Register** (63 FR 71375), EPA announced approval for the information collection requirements contained in the Consumer Confidence Report Rule and that OMB control number 2040–0201 had been assigned to these collections activities. The document amended 40 CFR part 9 to add this OMB control number to the comprehensive listing of OMB control numbers for EPA's regulations that appears in § 9.1.

Because there was no formal linkage between the December 28, 1998 notice and 40 CFR parts 141 and 142 for the Consumer Confidence Report Rule, the OFR did not make the connection to the information collection requirements contained in these sections. As a result, OFR added the following Effective Date Note to 40 CFR part 141 Subpart O: ''This section contains information collection requirements and will not become effective until approval has been given by the Office of Management and Budget.''

This document creates that formal linkage and instructs the OFR to remove the Effective Date Note.

Today's rule also amends the table of currently approved information collection request (ICR) control numbers issued by OMB to include those information requirements promulgated under the Primacy Rule which appeared in the **Federal Register** on April 28, 1998 (63 FR 23362). The affected regulations are codified at 40 Code of Federal Regulations (CFR) part 142. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations. The table lists the section numbers with reporting and recordkeeping requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

II. Why Is This Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because both the ICRs for the Consumer Confidence Report Rule and the Primacy Rule were previously subject to public notice and comment prior to OMB approval. Today's actions correct the CFR to properly reflect OMB's approval of the information collection requirements contained in 40 CFR part 141, subpart O, and part 142 and to amend the table in 40 CFR part 9 to include OMB approval numbers. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B). For the same reasons, EPA is making the provisions of this rule effective upon promulgation, as authorized under the APA (see section 553(d)(3)).

III. Do Any of the Regulatory Requirements Apply to This Action?

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

This technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).'' EPA's compliance with these statutes and Executive Orders for the underlying rules are discussed in the April 28, 1998 and August 19, 1998 **Federal Register** notices.

IV. Will EPA Submit This Final Rule to Congress and the Comptroller General?

Yes. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date for the removal of the Effective Date Notes of June 30, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Parts 141 and 142

Environmental protection, Reporting and recordkeeping requirements, Water supply.

Dated: June 21, 2000.

J. Charles Fox,

Assistant Administrator for Water.

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

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

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

2. In § 9.1, the table is amended by removing ''142.10–142.13'' and adding the new entries in numerical order under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Primary Drinking Water Regulations Implementation	
* * * * *	
142.10	2040–0090
142.11(a)(1)–(a)(5)	2040–0090
142.11(a)(6)	2040–0915
142.11(a)(7)	2040–0090
142.12	2040–0090
142.13	2040–0090
* * * * *	

[FR Doc. 00–16368 Filed 6–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6726–5]

RIN 2060–A173

Protection of Stratospheric Ozone: Allocation of Essential Use Allowances for Calendar Year 2000: Allocations for Metered-Dose Inhalers and the Space Shuttle and Titan Rockets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With this action, EPA is allocating essential-use allowances for calendar year 2000 for stratospheric ozone depleting substances (ODS) for use in medical devices and for use in the Space Shuttle Rockets and Titan Rockets for the year 2000 control period. Production and import of ODS for laboratory and analytical applications will be addressed in a separate rulemaking. The United States nominated specific uses of controlled ozone-depleting substances as essential for calendar year 2000 under the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). The Parties to the Protocol subsequently authorized specific quantities of ODS for calendar year 2000 for the uses nominated by the United States. EPA allocates essential use allowances to an applicant for exempted production or import of a specific quantity of class I ODS solely for the designated essential purpose. These essential use allowances permit a person to obtain controlled ODS as an exemption to the January 1, 1996 regulatory phase-out of production and import of these substances.

EFFECTIVE DATE: This action is effective June 30, 2000.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–93–39. The Docket phone is (202) 260–7548 and is located in room M–1500, First Floor, Waterside Mall 401 M Street, SW., Washington, DC 20460. The materials may be inspected from 8 a.m. until 4 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: The Stratospheric Ozone Protection Hotline at (800) 296–1996 or Erin Birgfeld, U.S. Environmental Protection Agency, Stratospheric Protection Division, Office of Air and Radiation (6205J), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460; *birgfeld.erin@epa.gov;* (202) 564–9079 phone and (202) 565–2096 fax.

SUPPLEMENTARY INFORMATION:

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I. Background
II. Allocation Process for Calendar Year 2000
III. Allocation of Essential Use Allowances for Calendar Year 2000
IV. Response to Comments
V. Administrative Requirements
VI. Judicial Review
VII. Congressional Review

I. Background

Overview of the Essential Use Process

The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) is the international agreement to reduce and eventually eliminate production and consumption of all stratospheric ozone depleting substances. This is accomplished through adherence to phase-out schedules for the production and consumption of specific ODS including chlorofluorocarbons (CFCs), halons, carbon tetrachloride, methyl chloroform, hydrochlorofluorocarbons, and methyl bromide. As of January 1996, production and import of class I ODSs were phased out in all developed countries, including the United States. However, the Protocol and the Clean Air Act (CAA or Act) provide exemptions which allow for the continued import and/or production of class I ODS for specific uses. Under the Montreal Protocol, exemptions are granted for uses that are determined by the Parties to be ''essential.'' Decision IV/25, taken in 1992, established criteria for determining whether a specific use should be approved as essential, and set forth the international process for making determinations of essentiality. The CAA provides for specific exempted uses for which class I ODSs may continue to be produced and imported.

Once the U.S. nomination for essential use allowances is approved by the Parties, the U.S. EPA allocates essential use allowances to each essential use applicant in accordance with the CAA. For the year 2000 and beyond, the CAA requires EPA to formally consult with the Food and Drug Administration (FDA) on the amount of CFCs that are necessary for the production of medical devices. On January 6, 2000, EPA issued an interim final rule (IFR) allocating essential use allowances for use in metered dose asthma inhalers (MDIs) and in the Space Shuttle and Titan Rocket (65 FR 716). Today's action allocates essential use allowances for use in medical devices and reflects the final determination of the amount of CFCs that are necessary for use in medical devices for calendar year 2000. This final rule also allocates

methyl chloroform for use in the Space Shuttle and Titan Rocket solid rocket motor assemblies.

What Was the International Procedure for Approving Essential Use Exemptions for the Year 2000?

The international process for nominating and approving essential use allocations for CFCs for use in medical devices for the year 2000 occurred in the same way as in prior years. The entities in Table I submitted applications requesting class I controlled substances for essential uses in response to a **Federal Register** notice in the Fall of 1998. Their applications requested exemptions for the production and import of specific quantities of certain class I controlled substances after the phase-out, and provided information in accordance with the criteria set forth in Decision IV/25 of the Protocol and the procedures outlined in the ''1997 Handbook on Essential Use Nominations.'' EPA reviewed the applications and nominated these uses to the Protocol Secretariat for analysis by the Technical and Economic Assessment Panel (TEAP) and its Technical Options Committees (TOCs). The Parties to the Montreal Protocol approved the U.S. nominations for essential-use exemptions during the Tenth Meeting in 1998 (Decision IX/18).

Overview of the Notice of Proposed Rulemaking and Interim Final Rule

The Notice of Proposed Rulemaking (NPRM) for allocating essential use allowances for the year 2000 was published on November 2, 1999 (64 FR 59141). In the NPRM, EPA proposed allocating CFCs for use in metered dose inhalers (MDIs) that meet the medical device definition in the Act, and methyl chloroform for use in the Space Shuttle and Titan Rocket. In the NPRM, EPA proposed to allocate the entire amount of CFCs for use in MDIs that was granted to the U.S. by the Parties to the Montreal Protocol, which was 3735 metric tons. However, EPA explained that because of additional requirements in the Clean Air Act that apply beginning in calendar year 2000, EPA needed to formally consult with FDA regarding the amount of CFCs that are necessary for use in medical devices for calendar year 2000 prior to issuing a final allocation. Following EPA's consultation with FDA, it was determined that a total of 2737 metric tons were necessary for production of MDIs for the year 2000. This allocation was reflected in the IFR published on January 6, 2000 (65 FR 716). By issuing the allocation as an interim final instead of a final rule, EPA ensured that there would be sufficient opportunity for all stakeholders to comment on the revised allocation while ensuring that CFCs were available for continued production of MDIs. Originally EPA planned to receive comments until February 7, 2000, however, in response to requests by stakeholders, EPA published a notice in the **Federal Register** on February 25, 2000 (65 FR 10025) extending the comment period on the IFR until March 27th, 2000.

EPA received a number of comments on the IFR published January 6, 2000 covering the following areas: the amount of CFCs allocated to specific companies, the process that EPA used in allocating essential use allowances for the year 2000, and various legal interpretations of the medical device exemption provided in the Act. This final rule revises the allocation of CFCs for use in medical devices to reflect a final determination of the amount of CFCs necessary for use in medical devices. EPA consulted with FDA in arriving at this final determination.

In the NPRM and the interim final rule, EPA explained that due to requirements of the CAA that apply beginning in calendar year 2000, the essential use exemption for import and production of small amounts of high purity ozone depleting substances (ODS) for laboratory and analytical uses may not be available after January 1, 2000. Today's action does not address laboratory essential uses; these will be addressed in a separate final rule.

II. Allocation Process for Calendar Year 2000

As discussed in the NPRM and IFR, the domestic allocation process for calendar year 2000 differs from past allocations due to changes in the requirements under the CAA. Prior to the year 2000, EPA allocated essential use exemptions under the original phase-out schedule contained in section 604 of the Act, and had the flexibility to create exemptions to the regulatory phase-out, where such exemptions had been approved under the Montreal Protocol. Thus, before the year 2000, EPA was able to authorize production and import of ODSs for essential uses allowed under the Protocol, without regard to whether the Act contains exceptions for those uses, as long as the total authorized production did not exceed the amount permitted by the Act.

Once the phase-out date for a particular substance has passed (as it has for CFCs), EPA must implement exemptions for essential uses of these chemicals as specified under the Act in section 604(d).

What Is the Relevant Exemption to the Phase-Out Provided for in the Act?

In allocating CFCs for use in MDIs, EPA must implement the exception for medical devices found in section 604(d)(2) of the Act. This exception states that notwithstanding the phase-out, EPA shall, to the extent consistent with the Montreal Protocol, authorize production of limited quantities of class I ODSs for use in medical devices, if FDA, in consultation with EPA, determines that such production is necessary.

How Does EPA Interpret the Definition of ''Medical Device'' as Specified in the Act?

''Medical device'' is defined in section 601(8) of the Clean Air Act as follows:

[A]ny device (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system—

(A) If such device, product, drug, or drug delivery system utilizes a class I or class II substance for which no safe and effective alternative has been developed, and where necessary, approved by the Commissioner [of FDA]; and

(B) If such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner [of FDA] in consultation with the Administrator [of EPA].

The preamble to FDA's September 1, 1999, notice of proposed rulemaking on essential use determinations (64 FR 47735) discusses FDA's approach to determining whether ''safe and effective alternative[s]'' have been developed. It states that ''A non-CFC product simply having the same active moiety as a CFC product is only one factor to be considered. Other factors, such as whether the non-CFC product has the same route of administration, the same indication, and can be used with approximately the same level of convenience, are important considerations. Additionally, FDA must consider whether patients who medically need the CFC product are adequately served by the non-CFC product. FDA's approval of a non-CFC product is a determination that the product is safe and effective, but it is not a determination that the product is a safe and effective alternative to any other product. That requires a separate and distinct analysis.'' FDA has not yet determined that any non-CFC product is a safe and effective alternative to any

CFC MDI. Accordingly, part (A) of the definition of medical device has not affected today's allocation.

With respect to part (B) of the definition of medical device (section 601(8)(B)), and in particular the use of the word ''essential'' in that part of the definition, EPA is relying on current FDA regulations (21 CFR 2.125) which contain a list of categories of CFC-containing medical devices, as that term is used in the CAA, that FDA, in consultation with EPA, has found to be essential. This list includes, among others, metered-dose steroids, metered-dose adrenergic bronchodilators, metered-dose cromolyn sodium, metered-dose ipratropium bromide, and metered-dose nedocromil sodium; all drugs for oral inhalation in humans. The companies for which EPA is granting essential use allowances produce CFC MDIs that fall within one of these categories. Thus, the products for which EPA is granting essential use allowances are ''determined to be essential'' by FDA.

Also with respect to part (B) of the definition of ''medical device'', EPA and FDA considered how to interpret the language regarding approval by FDA of the ''device, product, drug, or drug delivery system.'' The complete phrase reads as follows: ''if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator.'' EPA and FDA determined that in light of the surrounding language, this phrase refers to FDA's approval of an essential use, and not the approval of the specific product in question through approval of the New Drug Application (NDA) or Abbreviated New Drug Application (ANDA) for that product. Since approval of an NDA or ANDA under the Food, Drug, and Cosmetic Act (FDCA) involves unilateral action by FDA without notice-and-comment rulemaking or consultation with EPA, it is reasonable to conclude that section 601(8)(B) does not refer to approval of an NDA or ANDA under the FDCA. Therefore, FDA and EPA read section 601(8)(B) to refer to FDA's approval of an essential use which does require notice-and comment rulemaking in consultation with EPA. This means that an MDI is ''approved and determined to be essential'' if the MDI is included within the list of categories of CFC–MDIs on FDA's essential use list. All of the MDIs for which we are allocating CFCs today meet this qualification.

How Did EPA Consult With FDA on the Amount of CFCs Necessary for Use in Medical Devices?

Implementing the essential use exemption for MDIs under the Act required EPA to consult with FDA regarding the quantity of CFCs to be allocated. As stated earlier, section 604(d)(2) of the Act provides that EPA shall authorize production and import of limited quantities of class I substances for use in medical devices if FDA, in consultation with EPA, determines such authorization to be necessary. Administrator Carol Browner sent a letter to Dr. Jane Henney, Commissioner of FDA, dated October 28, 1999, requesting that FDA make a determination on the amount of CFCs that are ''necessary'' for the production of MDIs for calendar year 2000.

The 1997 TEAP Handbook on Essential Use Nomination (Handbook), the guidance document for essential use exemption applications at the international level, does not request information regarding specific products for which the CFCs will be used. Therefore, EPA sought more detailed information including which drug products would be produced using CFCs allocated in calendar year 2000. EPA sent out letters to the essential use applicants for medical devices, requesting this additional information under section 114 of the Act (separate letters were sent to the International Pharmaceutical Aerosol Consortium (IPAC) member companies). The responses to the letters included confidential business information on the types of drug products to be manufactured, as well as the quantity and the specific CFC chemical to be used in the manufacture of each product. EPA shared the responses to these letters with FDA to assist in determining the amount of CFCs for use in medical devices that are ''necessary.''

Dr. Henney's letter in response to the Administrator dated December 20, 1999, stated that 2737 metric tons of CFCs were necessary for use in medical devices for the year 2000, in contrast to the 3735 metric tons proposed to be allocated in the November 2, 1999 NPRM (64 FR 59141). A total of 2737 metric tons was subsequently allocated in the January 6, 2000 IFR (65 FR 716).

The rationale underlying the FDA determination was provided in Dr. Henney's letter to EPA dated December 20, 1999. ''In listing the amounts we believe to be necessary for use in medical devices, we referred to historical use and have included an additional amount to allow for overage, for waste during manufacturing, for uncertainties in the supply chain of CFCs since they are no longer produced in the United States, for changes in future market shares of specific products, as well as for unforeseen circumstances in the market. We also provided additional amounts based on our knowledge of certain manufacturing problems. In addition, we eliminated any double-counting we found and eliminated allocations for uses not considered essential by the Parties to the Montreal Protocol, even if those uses are currently listed in our regulation at 21 CFR 2.125(e).'' FDA also noted that they accounted for CFCs for use in the production of MDIs that would ultimately be exported to Canada.

Three companies commented that they did not receive sufficient CFC allocations in the IFR for the production of MDIs to meet their needs for the year 2000. In lieu of specific written comments, one company requested a meeting with EPA and FDA. A summary of the meeting is posted in docket # A–93–39. Based on the information provided by this company at the meeting, FDA issued a letter to EPA, dated March 6, 2000, in which it stated the factors that had led it to increase the amount determined to be ''necessary'' (See docket # A–93–39). Relevant factors included new information about this company's manufacturing process, and the company's ''contractual obligations to produce product necessary for patient health on behalf of another company.''

In response to the other two companies who commented that additional CFCs were necessary, EPA and FDA requested that they provide the following information: the number of units produced in 1999, the number of units produced in the first quarter of 2000, the total number of units anticipated to be produced in 2000, the target fill weight per unit, total CFC to be contained in the product for 2000, the additional amount necessary for production of each product, and the total amount of CFCs per product line for the year 2000.

One company sent EPA the additional information, which was then shared with FDA. FDA noted some discrepancies between the numbers that were reported to EPA and those that were reported in that company's annual report to FDA. The company sent EPA and FDA additional clarification after which FDA re-assessed their determination on the amount of CFCs necessary for the year 2000. In their letter dated May 5, 2000 (see docket # A–93–39), FDA states that the company does in fact require an additional amount for the production of MDIs due

to greater than anticipated market growth for their products.

For the third company that commented that it did not receive sufficient CFCs in the IFR, representatives from EPA and FDA participated in a conference call with representatives from the company on May 22, 2000 where the company shared the information EPA had requested pertaining to their past MDI production and future needs with EPA and FDA verbally. FDA and EPA reviewed the information, taking into account the following factors enumerated in the December 20, 1999 letter to EPA. These factors include: historical use, the additional amount necessary for waste and overage during manufacturing, uncertainties in the supply chain of CFCs, changes in future market shares of specific products, and unforeseen circumstances in the market. Based on this review, EPA and FDA agreed that the allocation published in the IFR is sufficient to meet the needs projected for this company for the year 2000. In their letter dated June 13, 2000, FDA determined that an additional amount is not necessary for the production of their product.

In accordance with the determinations made by FDA in consultation with EPA, today's allocation on the amount of CFCs necessary for use in medical devices states that a total of 3136.3 metric tons are necessary for use in MDIs for calendar year 2000.

When Is This Rule Effective?

This final rule is effective on June 30, 2000. Section 553(d) of the APA generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. However, APA section 553(d) excepts from this provision any action that grants or recognizes an exemption or relieves a restriction. Since today's action grants an exemption to the phase-out of production and consumption of CFCs, EPA is making this action effective immediately to ensure the availability of CFCs for medical devices during the 2000 control period.

III. Allocation of Essential Use Allowances for Calendar Year 2000

What Is EPA's Final Essential Use Allocation for Calendar Year 2000?

In today's action, EPA is allocating essential use allowances for the year 2000 control period to entities listed in Table I for exempted production or import of the specific quantity of class I controlled substances solely for the specified essential use. The final allocation for CFCs for use in MDIs reflects the final determination of the amounts of CFCs that are necessary as specified under section 604(d)(2) of the Act. (Note: There is no change from the IFR to the year 2000 allocation for the Space Shuttle and Titan Rockets)

TABLE I.—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2000

Company	Chemical	Quantity (metric tons)
(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease (in metric tons)		
International Pharmaceutical Aerosol Consortium (IPAC)—Medeva Americas, Inc., Boehringer Ingelheim Pharmaceuticals, Glaxo Wellcome, Aventis (formerly Rhone-Poulenc Rorer), 3M.	CFC–11 or CFC–12 or CFC–114.	2038.0
Medisol Laboratories, Inc.	CFC–11 or CFC–12 or CFC–114.	49.0
Schering Corporation	CFC–11 or CFC–12 or CFC–114.	1048.0
Sciarra Laboratories, Inc.	CFC–11 or CFC–12 or CFC–114.	1.3
(ii) Cleaning, Bonding and Surface Activation Applications for the Space Shuttle Rockets and Titan Rockets		
National Aeronautics and Space Administration (NASA)/Thiokol Rocket	Methyl Chloroform	56.7
United States Air Force/Titan Rocket	Methyl Chloroform	3.4

EPA is adding a parenthetical to Table I clarifying that CFCs are granted for use in the production of MDIs for oral inhalation only. The Parties to the Montreal Protocol do not consider MDIs for nasal inhalation to be essential, and thus, under the CAA EPA cannot approve CFCs for this use or any other use not considered essential by the Parties to the Protocol. In turn, this means that companies may not use their essential use allocation to produce a product not considered essential by the Parties to the Protocol.

Why Is EPA No Longer Allocating CFCs on a Chemical by Chemical Basis?

As discussed in the January 6, 2000 IFR, EPA is allocating essential-use allowances in aggregate amounts in accordance with Decision X/6 of the Parties to the Montreal Protocol which states that ''the quantities approved under paragraph 2 above and all future approvals are for total CFC volumes with flexibility between CFCs within each group.'' EPA has determined that allocating CFCs for the manufacture of metered-dose inhalers in the aggregate instead of on a compound-by-compound basis will add flexibility to the regulatory scheme without causing any additional damage to the stratospheric ozone layer since CFC–11, CFC–12 and CFC–114 all have the same ozone depleting potential of 1.0.

How Will the IPAC Companies Be Informed of Their Individual Allocations?

The International Pharmaceutical Aerosol Consortium (IPAC) consolidated the essential use exemption requests of its member companies for administrative convenience. EPA has already separately allocated the essential-use allowances allocated in the IFR to each of IPAC's member companies by means of a confidential letter. EPA will send a revised allocation letter to those IPAC companies whose essential use allowances were changed in today's final rule.

What Reporting Requirements Relate to the Essential Uses of Ozone Depleting Substances?

Any person obtaining class I controlled substances after the phase-out under the essential use exemptions in today's action is subject to all the restrictions and requirements in other

sections of 40 CFR part 82, subpart A. Holders of essential-use allowances or persons obtaining class I controlled substances under the essential-use exemptions must comply with the record keeping and reporting requirements in 40 CFR 82.13.

How Will Essential Use Allowances for Medical Devices Be Allocated in the Year 2001?

EPA and FDA have worked together to plan a streamlined regulatory process for the year 2001 and beyond, summarized as follows:

1. In letters sent directly to MDI manufacturers under section 114 of the Act, EPA will request detailed information regarding CFC usage for the production of MDIs for prior years and projected needs for 2001.
2. EPA will share this information with FDA which will use this information in consultation with EPA as the basis for the determination of the amount of CFCs necessary for use in medical devices.
3. EPA will issue a proposed rule setting forth the proposed allocations of CFCs .
4. EPA plans to issue a final allocation rule by December, 2000 to provide adequate time for companies to replenish their supply of CFCs for MDI production in the year 2001. In the proposed allocation rule for the year 2001, to be published later this year, EPA will explain the process EPA will use for the essential use allocation in detail and request formal comment on it.

VI. Response to Comments

Three commenters stated that the amount of CFCs allocated to their companies in the January 6, 2000 IFR was too low; one company requested a meeting with the EPA and FDA to discuss their allocation. EPA and FDA met with this company on Thursday March 2, 2000. A summary of this meeting is posted in docket # A–93–39. FDA subsequently issued a supplemental letter to EPA, dated March 6, 2000, in which it stated the factors that had led it to increase the amount determined to be necessary. Relevant factors included new information about the company's manufacturing process and the company's ''contractual obligations to produce product necessary for patient health on behalf of another company.''

The second commenter requested additional essential use allowances with one portion to be used for production in the year 2000, and a second larger portion to be added to their year 2000 allocation for use in 2001. EPA and FDA determined that allocating additional amounts of CFCs to this company in calendar year 2000 for use in 2001 is not ''necessary'' as specified in section 604(d)(2), since EPA will soon be proposing to allocate CFCs to all essential use applicants with sufficient advance time for this commenter and other applicants to acquire additional amounts of CFCs and replenish their supply of CFCs for 2001. Therefore, in reassessing the amount that was necessary for the year 2000, EPA and FDA considered only the additional amount that was requested for use in the year 2000.

As described earlier in the preamble, EPA and FDA requested additional information from this company to substantiate its claim that additional CFCs for the year 2000 were necessary. Using this information, FDA in consultation with EPA, reassessed the amount of CFC necessary for the year 2000 and found that due to greater than anticipated market growth, this company does in fact require an additional amount of CFCs for use in medical devices. This determination was provided to EPA in a letter from Dr. Jane Henney dated May 5, 2000.

The third company commented that it should receive the amount of CFCs that EPA proposed to allocate in the NPRM since giving them a lesser amount would, in their view, imperil the public health by possibly reducing access to the lower cost asthma medicines this company might provide. In their comment, this company did not provide a statement of need based on the amount of CFC–MDIs they planned to produce for the year 2000. Therefore, EPA and FDA asked the company to provide EPA and FDA the same information as the other two companies had previously provided. Representatives from EPA, FDA, and this company held a conference call on May 22, 2000 to discuss their request (minutes are posted in docket # A–93–39). Based on review of the information that the company provided, FDA, in consultation with EPA, determined that the additional CFCs requested by this company were not ''necessary'' as defined in 604(d)(2) of the Act.

This same commenter stated that FDA had failed to take into account several critical issues including: (1) A reduced allowance will encourage manufacturers holding large allocations to withdraw their generic products from the marketplace in favor of more expensive, less effective brand name products; (2) the potential impact of the withdrawal of certain generic CFC–MDI products may result in a shortage of this drug, or an increased market share for more expensive brand name products; (3) if other producers of this product continue to have manufacturing problems, this could lead to a shortage of the product overall; (4) shrinking the availability of CFCs may impair FDA's ability to continue strong Good Manufacturing Practice (GMP) enforcement; and (5) the reduced allocation will negatively impact impoverished populations due to a possible shortage of generic CFC–MDIs.

EPA and FDA have concluded that the year 2000 essential use allocations already reflect the contingencies raised by the commenter. As stated previously, FDA, in consultation with EPA, determined allocations for individual companies based on historical CFC uses while accounting for uncertainties in manufacturing, including knowledge of certain manufacturing problems, uncertainties in the CFC supply chain, and changes in the MDI market. These allocations are calculated to insure that the full range of medical needs is met throughout the entire patient population.

Three commenters stated that EPA should not delay its consultation with FDA and should issue the final rulemaking for the calendar year 2001 allocation earlier in the year. One commenter explained that only after EPA grants a license for essential use volumes can an MDI manufacturer place CFC production orders, arrange shipping and make other administrative arrangements which can take up to 8 weeks before the CFCs arrive at the manufacturing facility. For this reason, this particular commenter suggested that EPA begin rulemaking in June, 2000 and issue essential use allowances for 2001 in September, 2000.

EPA has planned the year 2001 allocation process in close coordination with FDA, and is committed to providing essential use allowances for the year 2001 in as timely a manner as possible while fulfilling all of our obligations under the CAA. Although we plan to begin the rulemaking process in June, the nature of the rulemaking process and the extensive coordination necessary with FDA are such that issuing a final rule in September of this year may not be possible. As stated earlier however, the Agency does plan to issue a final rule allocating essential use allowances for the year 2001 by December, 2000.

Six commenters expressed surprise at the adjustment of the amount of CFCs allocated in the IFR for the year 2000, given the figures in the proposal. EPA proposed to allocate the amount of CFCs approved by the Parties to the Montreal Protocol for the year 2000. After

consultation with FDA, EPA ultimately allocated a lower amount. The process set out by the Protocol Parties requires national governments to nominate amounts required for essential uses well in advance of allocation. Making responsible projections of need years in advance of actual requirement presents difficulties to both companies requesting CFCs, and to national governments. In past years EPA allocated the entire amount approved by the Parties and left it up to companies to elect not to use their entire allocation if it was not necessary. With this system, often companies do not use their entire allocation. In fact, in the year 1999, EPA allocated 3665 metric tons of CFCs, while only 2644 metric tons were actually imported for this use. Similarly, in 1998, 4,363 tons of CFCs were allocated for use in medical devices although only 2,235.6 tons were actually imported or produced for MDIs in that year. Beginning in the year 2000, the CAA requires that EPA and FDA consider what amount is necessary before the allocation occurs. This year, because the Agencies were adjusting to the new process, they did not have time to finish their consultation prior to proposal. EPA and FDA nonetheless are confident that the numbers actually allocated better reflect medical need in the U.S. for the year 2000 than the numbers in either the NPRM or the IFR. Recognizing that the process is new, however, EPA elected to maximize opportunity for stakeholder input by publishing the revised determination as an IFR. This procedure proved valuable, since in the case of some commenters, further information substantiated a further refinement of the year 2000 allocation. As explained elsewhere in the preamble, EPA plans to issue the 2001 NPRM after consulting with FDA. This will result in a smoother process in which all stakeholders will be able to comment on the allocation, as well as the allocation process itself, after the NPRM is issued, obviating the need for an IFR.

Five commenters were concerned about the perceived lack of transparency in the EPA/FDA consultation over the amount of CFCs determined to be necessary for each company. These commenters felt that the FDA methodology, assumptions and other bases for determining the amounts necessary should have been subject to public review and comment, and that this lack of transparency in the allocation process should be remedied in the year 2001 and beyond. One commenter stated that EPA had provided inadequate notice in violation of the Administrative Procedures Act (APA), and that FDA's determination did not contain sufficient information to provide the commenter with an opportunity to provide meaningful comments on a number of significant issues. (We note that because this rulemaking was conducted under section 307(d) of the CAA, the relevant procedures are those contained in that section rather than in the APA.) One commenter stated that neither agency placed any non-confidential information on the record to support its determination, and that EPA relied excessively on the FDA determination on the amount of CFCs necessary. This commenter referred to section 307(d)(6)(C) of the CAA, which states that ''[t]he promulgated rule may not be based (in part or in whole) on any information or data which has not been placed in the docket as of the date of such promulgation.'' In the opinion of the commenter, contrary to Section 307(d)(6)(C), the IFR did not appear to have been based on ''information or data'' placed in the docket as of January 6, 2000. The commenter stated that the docket contains little if any information supporting EPA's authorization of CFC volumes, and no information supporting FDA's determination of the volume deemed ''necessary for use in medical devices''. As a result, the commenter concluded that interested parties could not comment in an informed manner on the final allocation.

EPA undertook a variety of measures to ensure that interested parties had an opportunity for meaningful comment on the allocation. The Agency published the initial allocation as an interim final rule, in order to encourage commenters to supply important information and, potentially, to affect the final allocation. In response to a commenter's request, EPA extended the comment period to ensure that commenters who wished to supply important information had adequate time to do so. In addition to reviewing written submissions, both EPA and FDA heard oral presentations from companies that disagreed with the interim final allocation. As described below, EPA attempted to place in the docket as much information as possible regarding the factual data on which the rule is based, and the methodology used in obtaining the data and analyzing the data. However, since much of the data on which the rule is based is treated as confidential business information, it has not been possible to include all relevant information in the public docket.

Dr. Jane Henney, Commissioner of the U.S. Food and Drug Administration, in her letter dated December 20, 1999, to Carol M. Browner, Administrator, U.S. EPA, set forth parameters used in determining the amount of CFCs necessary for MDIs in 2000. FDA provided further information about its revised determination in Dr. Henney's letters of March 6, 2000, May 5, 2000, and June 13, 2000 (these documents are filed in docket no. A–93–39). Composite data on the amount of CFCs actually used and the amount of CFCs allocated to the U.S. is compiled each year in a US CFC accounting framework available in the docket. The docket also contains EPA's letters issued on October 1, 1999, and October 13, 1999 pursuant to section 114 of the CAA requesting information from MDI manufacturers regarding the specific products they planned to produce using their essential use allowances and the amount of CFCs they would use for production in the year 2000. The responses to these letters contain confidential business information and thus are not available in the public docket. However, the types of information requested can be ascertained by examining the letters that EPA sent out to the MDI manufacturers. EPA provided FDA with the responses to these letters in the course of our consultation.

EPA agrees that the allocation in the future should be as transparent a process as possible while accounting for the confidential nature of the data employed to make the determination on the amount of CFCs necessary. Briefly, as a first step in assuring this transparency, EPA plans to describe fully in an upcoming NPRM the proposed process for future determinations, request comment on it, and carefully review all comments. EPA and FDA have planned a process which will allow the determination on the amount of CFCs necessary for each company for the year 2001 to occur in as open a manner as possible. At the beginning of the process, EPA will send out letters pursuant to section 114 of the Act requesting information from each potential essential use holder. These letters will request information such as the number of units of each product produced in previous years, the number of units produced in the first quarter of this year, the gross target fill weight per unit, the total CFC to be contained in the product for 2000, the number of units of each product anticipated to be produced in 2001, the additional amount of CFCs necessary for production, and the total amount of CFCs requested for each product in 2001. FDA will compare the information provided by the companies to information in annual reports submitted to FDA by the pharmaceutical

companies requesting an essential use allocation. In general, FDA and EPA will base the determination of necessary amounts and the allocation on this information. Thus, each company will know what information it has submitted as the basis for its own allocation, while the process will protect against disclosure of confidential business information to competitors. In addition, stakeholders will have an opportunity to comment on the proposed allocation prior to EPA issuing the final allocation for the year 2001.

One commenter proposed a reporting framework for companies to provide information on their CFC use for 1999 and to project their needs for the year 2001. EPA appreciates this input, and used the commenters' suggested reporting framework, along with other information, as a starting point for our discussions with FDA regarding the information we will request from companies as a basis for the year 2001 allocation. The reporting framework that was agreed upon for the year 2001 incorporates most of the information from this suggested framework, albeit in a slightly different format.

Several commenters took issue with EPA's interpretation of the CAA exemption for medical devices at section 601(8)(B) of the Act. Some stated that the term ''approved'' at 601(8)(B) should refer to a product under an approved NDA or ANDA, and not an approved active moiety. One commenter reasoned that EPA must interpret ''approved'' consistently in the definition of medical device, as words used in different parts of the same statute are intended to have the same meaning. Thus, since the commenter believed that section 601(8)(A) refers to approved drug products, the commenter argued that section 601(8)(B) must also. Another comment stated that EPA's reading of ''approved and determined to be essential'' as a single action renders the term ''approval'' meaningless, in violation of principles of statutory construction. One commenter also stated that EPA's reading of the word ''approved'' was inconsistent with the FDA September 1, 1999 proposed rule on the transition (64 FR 47735).[1]

EPA disagrees with these assessments since the word ''approved'' in section 601(8)(A) refers to an approved alternative and not an approved drug product. We refer to the explanation in the preamble to the FDA proposed rule which states ''although FDA approval does constitute a determination that a product is safe and effective on its own, this finding does not constitute a determination regarding whether one product is a medically acceptable alternative for another.'' Further, FDA's proposed rule does not require the drug product to be approved to receive CFCs. Rather, both the current regulations under 21 CFR 2.125(e) and the proposed rule by FDA to revise 2.125 contain a mechanism by which CFC use in an investigational drug may be considered essential.

Another commenter stated that Section 601(8) of the CAA requires that each drug product (*i.e.,* ''device, product, drug, or drug delivery system'') be approved and determined to be essential by FDA before it can qualify as a medical device under the CAA. The commenter goes on to state that under accepted rules of statutory construction, a list of specific items in a statute is intended to be finite, not illustrative, unless the statute expressly indicates otherwise. Thus, the commenter argues that because active moieties are not on this list, FDA can only approve and determine to be essential a device, product, drug, or drug delivery system. The commenter argues further that its interpretation is bolstered by the Food, Drug, and Cosmetic Act (FDCA), where ''approved drug'' has been held to mean the entire drug product and not merely the active ingredients in the drug product. However, the commenter does not recognize that the term ''drug,'' as used in the FDCA, can mean either ''drug product'' or ''active moiety.'' EPA, in consultation with FDA, believes that reading ''drug'' in this provision of the Act to mean ''active moiety'' most closely effectuates Congressional intent.

As stated in the preamble to the IFR, it is impossible to read the term ''approved'' in section 601(8)(B) as referring to approval of an New Drug Application (NDA) or Abbreviated New Drug Application (ANDA), considering the context in which that term is used. The passage states that the public must have notice and an opportunity for comment before the ''device, product, drug, or drug delivery system'' is ''approved and determined to be essential.'' FDA has informed us that approvals of drug products under the FDCA are issued without notice and comment. Furthermore, as noted in the preamble to the IFR, the statutory language refers to actions taken by FDA, in consultation with EPA. FDA does not consult with EPA prior to approving drug products under the FDCA. We refer to the preamble for the IFR for a more detailed discussion of this issue. As the Supreme Court has noted: ''It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.'' *Davis* v. *Michigan Dept. of Treasury,* 109 S. Ct. 1504 (1989). Here, the context makes clear that ''approval'' cannot mean approval of an NDA or ANDA. Thus, the use of the terms ''approved'' and ''determined to be essential'' in the same sentence may simply be intended to clarify the nature of the action: *i.e.,*FDA, in consultation with EPA, makes a determination of essentiality and in so doing approves an exemption.

Three commenters stated that the CAA does not delegate to the FDA the authority to dictate the nomination quantity and allocation of class I substances for medical devices. Rather, the CAA requires only that the Administrator (of EPA) consult with the Commissioner (of FDA) as to whether the authorization of class I substances for medical devices is necessary. The commenters took issue with EPA's reading of the statute as directing the Commissioner of the FDA to determine the quantity of class I substances necessary for medical devices. The commenters believe that the CAA requires the FDA to make a yes/no decision regarding whether class I substances are necessary for use in an essential product, *i.e.,* technically necessary for the functioning of the MDI. According to the commenters, Title VI of the CAA requires FDA to determine whether a particular approved MDI using an ODS is '' essential,'' and whether no safe and effective alternatives exist. If these questions are answered affirmatively, then FDA must consult with EPA and determine whether CFCs are ''necessary'' for use in MDIs, *i.e.,* whether, as a technical matter, the device needs this chemical to operate properly. If so, then it is EPA's responsibility to determine ''after notice and opportunity for public comment'' what CFC volume should be authorized for use in those MDIs. Two commenters went on to state there is no indication that FDA is in a better position to make decisions on quantity, and that EPA has experience in evaluating the necessary amount of CFCs from the Agency's past review of companies' requests for class I substances for use in medical devices.

Section 604(d)(2) of the Act states the following: ''The Administrator, after notice and opportunity for public

[1] The FDA proposed rule on determinations of essentiality states that ''a food, drug, device, or cosmetic that is, consists in part of, or is contained in, an aerosol product or other pressurized dispenser that releases an ODS is an essential use of the ODS under the Clean Air Act if paragraph (e) of this section specifies the use of that product as essential. For drugs, including biologics and animal drugs, and for devices, an investigational application or an approved marketing application must be in effect, as applicable.''

comment, shall, to the extent such action is consistent with the Montreal Protocol, *authorize the production of limited quantities of class I substances solely for use in medical devices* if *such authorization* is determined by the Commissioner [of FDA], in consultation with the Administrator [of EPA], to be necessary for use in medical devices'' (emphasis added). It is clear that the authorization in question may not be for an indefinite amount but must be for ''limited quantities.'' It is equally clear that the subject of the Commissioner's necessity determination is ''such authorization.'' Thus, if the latter part of the text quoted above were written in the active voice, it would say: ''if the Commissioner, in consultation with the Administrator, determines such authorization to be necessary for use in medical devices.'' We note that the expression ''such authorization'' refers back to the phrase ''authorize the production of limited quantities of class I substances solely for use in medical devices.'' Thus, the Commissioner of FDA must consider not only whether *any* production is necessary, but what *quantity* of production is necessary.

Further, although EPA does have some data on CFC usage (which is shared with FDA), medical experts at FDA are privy to confidential business information regarding annual sales and distribution of MDI products which gives them far more complete knowledge of the MDI market than EPA. Because of their access to additional information and the fact that their medical expertise is integral to making these decisions to protect the health of asthmatics, EPA believes it is consistent with Congressional intent to consult with FDA in making decisions regarding the amount of CFCs necessary for the production of MDIs.

Another commenter stated that EPA, in deferring to FDA's decision regarding the volume of essential use allowances, renders meaningless the requirement that EPA, not FDA, give interested parties notice and opportunity to comment on the allocation process. This commenter believed that MDI manufacturers must have meaningful participation in the allocation process, and that EPA has delegated this critical decision to FDA, precluding such participation.

EPA disagrees with this characterization of the process leading to the allocation. In fact, EPA extensively reviewed the public comments on the interim final rule with FDA. This allowed a joint reassessment of the determination of the amount of CFCs necessary. The initial determination on the amount of CFCs necessary was revised based on additional information submitted by stakeholders in response to the interim final rule. In the future, this same type of consultation between the agencies will occur on any comments that require a reassessment of the amount of CFCs necessary for use in medical devices. With this model, it is clear that MDI manufacturers do in fact have an avenue for actively participating in the allocation of CFCs for medical devices.

One commenter quoted a passage from the legislative history of the 1990 Amendments (S. Rep No. 228, 101st Cong., 1st Sess. 1989, 1990). The commenter stated that this passage says nothing about FDA being required to determine the quantity of ODS that is essential. In response, we note that the passage simply does not provide any information regarding interpretation of the phrase: ''if such authorization is determined by the Commissioner, in consultation with the Administrator, to be necessary for use in medical devices.'' In fact, the original Senate language regarding the exception for medical devices was somewhat different from what appears in the 1990 Amendments. Thus, this passage from the legislative history is of limited use.

One commenter stated that EPA and FDA's interpretation of the definition of medical device at section 601(8)(B) could undermine the clear intent of Congress in enacting Title VI to phase-out CFC-containing products. According to the commenter, allowing new ODS products with existing active moieties to be automatically deemed essential can only perpetuate the use of CFC MDIs. The commenter goes on to assert that this would likely encourage some U.S. companies to continue to formulate new CFC MDIs at the same time that other companies are diligently working to transition away from CFC products. Finally, this commenter states that the EPA and FDA interpretation is inconsistent with the overarching objective of the Montreal Protocol, which is the phase-out of ODS.

FDA's proposed rule on determinations of essentiality will govern the transition to CFC-free alternatives in a manner that protects both the environment and the health of patients who require these medications. EPA is managing this transition in accordance with the provisions set forth by the CAA and Decisions of the Parties to the Montreal Protocol, and does not believe that its interpretation of the CAA as explained in this preamble will in any way delay the transition to CFC-free alternatives. EPA is allocating essential use allowances according to FDA's definition of essentiality to ensure that patients continue to have access to life saving asthma and respiratory disease medication. The potential entry of a new CFC-MDI product that contains an active moiety that is already considered essential under both the Montreal Protocol and FDA's proposed transition rule would not have any additional environmental impact since the number of asthmatics requiring medication does not increase to reflect growth in of the number of different products containing the same active moiety.

One commenter stated that there is no basis in the CAA for changing the longstanding system for determining the essential use allowance allocations, and that there is no language in the CAA that suggests an intention to modify the essential use allocation system in any respect in the year 2000.

This statement is incorrect. As explained in the NPRM, and the IFR, prior to the year 2000, EPA allocated essential use exemptions under the original phase-out schedule contained in section 604(a) of the Act. This schedule does not require the complete phase-out of any ODS prior to calendar year 2000. Under section 606 of the Act, EPA was obligated to create an accelerated phase-out through regulation to match the accelerated phase-out under the Protocol. However, EPA had the flexibility to create exemptions to the regulatory phase-out, where such exemptions had been approved under the Montreal Protocol. Thus, for the past several years, EPA has been able to authorize production and import of ozone-depleting substances for essential uses allowed under the Protocol, without regard to whether the Act contains exceptions for those uses, as long as the total authorized production does not exceed the amount permitted by the Act. However, January 1, 2000, is the phase-out date under Section 604 of the Act for all class I substances with the exception of methyl chloroform and methyl bromide. Because the phase-out date for CFCs has passed, EPA is no longer be able to authorize production of that substance on the basis of the slower phase-out schedule under the Act. Therefore, in this rulemaking, EPA has implemented for the first time the essential use exemption for medical devices in section 604(d)(2).

We note that EPA clearly stated in establishing the pre-2000 framework for essential uses that it was not at that time implementing the exemptions in section 604(d) of the statute, but was instead simply ensuring that exemptions approved under the Protocol were consistent with the phase-out schedule

in section 604(a). Thus, in its 1994 proposed rule, EPA stated: ''Section 604 of the CAA authorizes the granting of specific exemptions from the phase-out schedules contained in the Clean Air Act * * * [including] for limited quantities of class I substances solely for use in medical devices if such authorization is determined to be necessary * * * In today's action, EPA does not propose essential uses under the provisions of the CAA. However, EPA does propose to permit continued production for the essential uses authorized under the Protocol, so long as these essential use exemptions do not exceed amounts allowed in the schedule contained in section 604(a) of the CAA.'' 59 FR 56283 (November 10, 1994). Thus, it is clear that in establishing the pre-2000 essential use framework, EPA was working within the language of section 604(a), and not section 604(d). As a result, the commenter's statement that EPA is changing its ''long standing interpretation'' of section 604(d)(2) is incorrect.

One commenter stated that there is nothing in the legislative history that suggests any intention to modify the system [of essential use allowances] that has been followed for over a decade. In this regard, the statutory text is clear on its face. As explained above, in this rulemaking EPA is interpreting CAA section 604(d)(2) for the first time. In the 1990 Amendments, Congress established the year 2000 as the phase-out date for most class I ODS. This is reflected both in the table in 604(a) and in 604(b), which states: ''Effective January 1, 2000 * * * it shall be unlawful for any person to produce any amount of a class I substance.'' Section 604(d)(2) states that ''notwithstanding the termination of production required by subsection (b),'' EPA shall, if certain requirements are met, ''authorize the production of limited quantities of class I substances solely for use in medical devices.'' Thus, Congress clearly gave the year 2000 special significance, and just as clearly indicated that section 604(d)(2) governs the essential use process with respect to medical devices after January 1, 2000. As a result, EPA does not have the option of continuing with the pre-2000 essential use process, but rather must implement section 604(d)(2).

This commenter also stated that FDA and EPA had acted in contravention of the Waxman-Hatch Act by reducing the amount of essential use allowances available to a generic MDI manufacturer. The commenter went on to point out that the prevalence of asthma is increasing in this country, in particular among low income and minority populations. They state that EPA and FDA's actions reducing the allocation of CFCs for a company that produces low-cost generic MDIs threatens the public health and represents an unreasonable agency action.

EPA disagrees strongly with this characterization. EPA in allocating CFCs for use in metered dose inhalers, and FDA in setting up the framework for the transition to CFC-free asthma medications, are committed to managing the transition in a manner that in no way compromises the public health of any population while carrying out a Congressional directive. Congress clearly did not intend for EPA to authorize unlimited amounts of CFCs for use in MDIs. Instead, section 604(d)(2) requires that EPA only allocate the amount of CFCs that are ''necessary'' as determined by FDA in consultation with EPA. Both agencies are committed to providing enough essential use allowances to protect the public health while fulfilling our obligations under the CAA and the Montreal Protocol. Additionally, in the case of this particular company, the allocation they received in the IFR was higher than the largest amount of CFCs they have used to produce MDIs in any year since 1996. While, EPA and FDA understand the need for this and all companies to have some flexibility on the amount of CFCs available to them, in this particular case, both Agencies believe that a sufficient amount of flexibility was already built into the allocation in the IFR. Thus, EPA and FDA believe that the availability of low cost generic drugs to poor populations will not be affected by allocating CFCs to this company in the amount published in the IFR.

This commenter also stated that the impact on the ozone layer from CFC-MDIs is negligible. Under the terms of the Montreal Protocol and as mandated by the CAA, EPA implements the phase-out of the production and import of CFCs for all uses. At the same time, Congress and the Parties to the Protocol understood the need to continue to provide CFCs to produce CFC-MDIs until safe and effective alternatives are available. As evidenced by today's rule and the essential use allocation process since 1996, EPA and FDA are also committed to providing CFCs for necessary for use in MDIs until a product is no longer considered essential.

One commenter stated that FDA and EPA now have discretionary authority under the CAA to require *de novo* review of the essentiality of all CFC-containing products. Section 604 of the CAA provides for the phase out of all class I substances by January 1, 2000. The use of CFCs in MDIs is exempted from this requirement by section 604(d)(2) which authorized the use of CFCs in MDIs but only to the extent ''consistent with the Montreal Protocol.'' Under the Montreal Protocol, Decision IV/25 states that the use of CFCs in an MDI product is essential only if the product is ''necessary for the health * * * of society''. This commenter also states that it is evident that new CFC MDI products containing the same active moieties already available in existing products do not automatically meet this criteria.

The commenter may be confusing the domestic and international processes for determining essentiality. The criteria for determining essentiality that appear in Decision IV/25 are used only in the international process. The Parties apply the criteria in Decision IV/25 in deciding whether a specified quantity of CFCs is essential during a specified year for a specified use. In managing the domestic process, EPA and FDA look to the requirements of Title VI of the CAA, in particular the language of sections 601(8) and 604(d)(2). One of the requirements of section 604(d)(2) is that allocations are to be ''consistent with the Montreal Protocol.'' EPA considers allocations to be ''consistent with the Montreal Protocol'' if the Parties have approved the allocated quantities (or greater quantities) for the specified uses during the specified time period. Hence, EPA will interpret this comment as a set of recommendations for the application of the criteria in Decision IV/25 to future nominations.

One commenter stated that while they were pleased to see that EPA had not allocated as much as proposed, that EPA still was not in compliance with Section 604 of the CAA. This commenter stated that pursuant to their comments submitted on the NPRM, EPA should not authorize essential use allowances for the production of CFC-based albuterol MDIs since there is a CFC-free alternative on the market. EPA believes that we addressed this comment fully in the preamble to the Interim Final Rule (65 FR 716).

One commenter stated that she is an asthma and allergy sufferer and that she currently uses a variety of medications to treat these conditions, including MDIs containing CFCs. However, the commenter stated that she would appreciate help in getting better medications that contain no CFC's since she is also an environmentalist and also concerned about the environment.

EPA is committed to balancing the dual goals of protecting patient health and the environment by nominating essential uses to the Parties to the

Montreal Protocol and allocating essential use allowances in a manner consistent with both the Protocol and the CAA. We understand that it is critical that these essential use allowances continue to be provided to companies who produce medical devices essential for the health and well-being of asthmatics in this country. However, EPA continues to work hard in areas such as outreach and education to facilitate the transition to CFC-free products for the treatment of asthma and chronic obstructive pulmonary disease. EPA refers the commenter to the following sources of information which provide information on the current status of the transition to CFC-free alternatives:

1. The EPA stratospheric protection website at *http://www.epa.gov/ozone/mdi/mdi.html*
2. The FDA website at *http://www.fda.gov/cder/mdi/*
3. The National Asthma Education and Prevention Program website at *http://www.nhlbi.nih.gov/health/public/lung/asthma/mdiintro.htm.*

V. Administrative Requirements

A. 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, 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 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 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. Section 204 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal 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.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Because this rule imposes no enforceable duty on any State, local or tribal government it is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is Significant and therefore subject to OMB review and the requirements of the Executive Order. The 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 entitlement, 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 by OMB and EPA that this action is not a Significant regulatory action under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

C. Paperwork Reduction Act

This action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) previously approved the information collection requirements contained in the final rule promulgated on May 10, 1995, and assigned OMB control number 2060–0170 (EPA ICR No. 1432.16).

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.

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.

D. 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. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility

After considering the economic impacts of today's final rule on small entities, EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this action will not have a significant economic impact on a substantial number of small entities. This rule does not have a significant impact on a substantial number of small entities. The only entities that are directly affected by this allocation are those to which CFCs and other ODSs are being allocated. There are only ten entities which are affected by this rulemaking (see table 1 above). This rule does not have an adverse economic impact on any entity because it grants exceptions to a pre-existing ban.

F. Applicability of Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health and 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 Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it implements the phase-out schedule and exemptions established by Congress in Title VI of the Clean Air Act.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in this 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, and 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 consensus standards. This rule does not involve technical standards. Therefore, EOA did not consider the use of any voluntary consensus standards.

H. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 432255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and theat preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner. This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule will affect only the ability of private entities and the national government to request production of controlled ozone-depleting substances. Thus, the requirements of section 6 of the Executive Order to not apply to this rule.

VI. Judicial Review

Under Section 307(b)(1) of the Act, EPA finds that these regulations are of national applicability. Accordingly, judicial review of the action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within sixty days of publication of the action in the **Federal Register**. Under Section 307(b)(2), the requirements of this rule may not be challenged later in the judicial proceedings brought to enforce those requirements.

VII. Congressional Review

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. As

stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of June 30, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Imports, Ozone layer, Reporting and recordkeeping requirements.

Dated: June 22, 2000.

Carol M. Browner,

Administrator.

40 CFR Part 82 is to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601,7671–7671q.

Subpart A—Production and Consumption Controls

2. Section 82.4 is amended by revising the table in paragraph (t)(2) to read as follows:

§ 82.4 Prohibitions.

* * * * *

(t) * * *

(2) * * *

TABLE 1—ESSENTIAL USE ALLOCATION FOR CALENDAR YEAR 2000

Company	Chemical	Quantity (metric tons)
(i) Metered Dose Inhalers (for oral inhalation) for Treatment of Asthma and Chronic Obstructive Pulmonary Disease (in metric tons)		
International Pharmaceutical Aerosol Consortium (IPAC)—Medeva Americas, Inc., Boehringer Ingelheim Pharmaceuticals, Glaxo Wellcome, Aventis (formerly Rhone-Poulene Rorer), 3M.	CFC–11 or CFC–12 or CFC–114	2038.0
Medisol Laboratories, Inc.	CFC–11 or CFC–12 or CFC–114	49.0
Schering Corporation	CFC–11 or CFC–12 or CFC–114	1048.0
Sciarra Laboratories, Inc.	CFC–11 or CFC–12 or CFC–114	1.3
(ii) Cleaning, Bonding and Surface Activation Applications for the Space Shuttle Rockets and Titan Rockets		
National Aeronautics and Space Administration (NASA)/Thiokol Rocket	Methyl Chloroform	56.7
United States Air Force/Titan Rocket	Methyl Chloroform	3.4

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Office of Inspector General

42 CFR Parts 409, 410, 411, 412, 413, 419, 424, 489, 498, and 1003

[HCFA–1005-N5]

RIN 0938–AI56

Medicare Program; Prospective Payment System for Hospital Outpatient Services; Delay of Effective Date

AGENCY: Health Care Financing Administration (HCFA), HHS, and Office of Inspector General (OIG), HHS.

ACTION: Notice of delay of effective date for final rule with comment period.

SUMMARY: This document delays the effective date on a final rule with comment period published in the **Federal Register** on April 7, 2000 (65 FR 18434). That rule implemented a prospective payment system for hospital outpatient services furnished to Medicare beneficiaries, as set forth in section 1833(t) of the Social Security Act. It also established requirements for provider departments and provider-based entities, and it implemented section 9343(c) of the Omnibus Budget Reconciliation Act of 1986, which prohibits Medicare payment for nonphysician services furnished to a hospital outpatient by a provider or supplier other than a hospital, unless the services are furnished under an arrangement with the hospital. In addition, the rule established in regulations the extension of reductions in payment for costs of hospital outpatient services required by section 4522 of the Balanced Budget Act of 1997, as amended by section 201(k) of the Balanced Budget Refinement Act of 1999. The effective date is delayed from July 1, 2000 to August 1, 2000.

DATES: *Effective date:* August 1, 2000, except that the changes to § 412.24(d)(6), new § 413.65, and the changes to § 489.24(h), § 498.2, and § 498.3 are effective October 10, 2000.

Applicability date: For Medicare services furnished by hospitals that are subject to the prospective payment system, including hospitals excluded from the inpatient prospective payment system, and by community mental health centers, the applicability date for implementation of the hospital outpatient prospective payment system is August 1, 2000.

FOR FURTHER INFORMATION CONTACT: Janet Wellham, (410) 786–4510.

SUPPLEMENTARY INFORMATION:

I. Background

On April 7, 2000, we issued a final rule with comment period in the **Federal Register** (65 FR 18434) that reflected the provisions of the September 8, 1998 proposed rule (63 FR

47552), except as noted in the preamble of the April 2000 rule (65 FR 18527).

Based on the following concerns, we have decided to delay the effective date of the April 2000 final rule until August 1, 2000.

In order to implement the prospective payment system (PPS), we have had to make a major change to the current claims processing system. This change, called the claims expansion and line item processing (CELIP), expands the electronic version of the claim form used by hospitals to submit claims to the automated bill processing systems to correctly determine the Medicare payment and beneficiary copayment amounts for outpatient services under PPS. Because a beneficiary can receive many outpatient services during one hospital visit and the payment system must properly group all the services furnished in one visit to accurately calculate Medicare's payment and the beneficiary's copayment, it was necessary to expand the electronic claim form to greatly increase the number of line items a hospital can bill for any one visit as well as provide for adjudication of each individual line item on the claim. As noted in the final rule with comment period, the CELIP is a necessary prerequisite for implementing outpatient PPS (65 FR 18488).

During most of 1998 and for all of 1999, HCFA, along with other government agencies and private sector companies throughout the world, focused its technology resources on ensuring the Y2K compliance of its computer systems. After meeting the challenges posed by Y2K, HCFA then resumed other systems work, including testing implementation of the CELIP. As we began testing the CELIP, some unanticipated problems arose, resulting in a need for reprogramming and testing the systems changes. Although we originally believed that the problems could be corrected in time to implement the PPS on July 1 as provided in the April final rule with comment period, we have concluded based on more recent testing and adjustment that it is virtually impossible for the new payment system to be effectively implemented on July 1 as we had planned. We address below some of the problems HCFA, its contractors, and hospitals encountered in transitioning to the new outpatient PPS payment system that have necessitated a change in effective date for implementation of that payment system.

Expanding the number of line items on the electronic claim form from the current 56 to the 450 needed to implement the PPS caused serious problems for HCFA's computer systems. When we attempted to program this change, we found that our computer systems could not accommodate the expanded claim form. As a result, we had to split the claim form into four different files, expending time and programming resources for tasks we had not anticipated. We encountered similar problems in installing the outpatient code editor (OCE). The OCE is also a critical component of the system we use to pay outpatient claims. The OCE edits claim data to identify errors and returns edit flags when appropriate. It also assigns the Ambulatory Payment Classification (APC) number. Each APC is comprised of services that are similar clinically and which require similar hospital resources. The APC is supplied by the OCE to the pricing program that calculates a payment rate for each APC. We found that the OCE did not fit into the configuration management tool that governs the size of the software used by each computer system to make payment under the PPS. As a result, the tables in the OCE were reconfigured as with the claim form, and we had to split the OCE into segments to allow it to work with HCFA's computer systems. Because of these and similar problems, the testing of our computer systems with the CELIP installed had to be repeated a number of times. (In the testing mode in which we were operating, this did not cause any disruptions to payments made under current payment methodologies.)

As noted above, the CELIP was a necessary prerequisite for the systems changes that will actually implement the new PPS payment methodology. The OCE and CELIP have now been released to intermediaries, although we continue to test and refine CELIP further. Now that the CELIP has been released, we must make and fully test the PPS methodology systems changes before implementation to ensure that we make accurate payments. It is not feasible to complete this work consistent with a July 1 effective date for the PPS.

A one-month delay in the effective date of the PPS will also allow hospitals to have sufficient time to adjust to the programming changes necessary to implement the new payment system. Hospitals need sufficient time after HCFA completes its programming changes to complete modifications of their own systems, test those systems in interaction with HCFA's new systems, and train their personnel on use of the new systems. As previously discussed, these activities have been delayed due to problems with various required systems changes and modifications to the OCE, the magnitude of which was not known when we published the April 2000 final rule with comment period.

We acknowledge that unavoidable delays in software development by HCFA have impeded the ability of the hospital industry to fully prepare for implementation of outpatient PPS. We have been informed by hospitals and major hospital associations that, given these programming delays that HCFA has encountered, maintaining the current effective date for the PPS would virtually ensure that hospitals would not be able to implement the PPS accurately. A brief delay in the effective date would allow the industry more time for training and preparation for what we hope will be a fully operational PPS, which would in turn help reduce the number of errors or other problems that might occur as hospitals transition to the new PPS.

We are intensifying our efforts to provide clear and accurate training to fiscal intermediaries, hospitals, and community mental health centers. On June 15, 2000, we held a national satellite broadcast to assist hospitals in preparing for implementation. We are also compiling a booklet of ''Frequently Asked Questions and Answers'' that will be available both on the internet and in printed form. Other efforts include reconfiguring the PPS materials on the HCFA web site to facilitate access to relevant program instructions, training documents, and other materials. In July 2000, we plan to host a face-to-face town hall meeting at the HCFA headquarters in Baltimore, Maryland. The purpose of this meeting will be to respond to any remaining concerns about the implementation of the new system. To assure that our fiscal intermediaries remain up-to-date, and that we can respond to any contractor concerns, we are continuing our weekly conference calls with them and will also provide them with a video to update their training. We also plan to continue our weekly teleconferences with hospital and beneficiary associations to keep them abreast of our implementation schedule, and to answer any questions.

We considered, but rejected as unworkable, contingency plans that we hoped might have allowed us to meet the July 1 effective date. Under these plans, we might have been able to meet the effective date even though we would not have been able to implement the PPS on that date. Under this scenario, we would have had to either request hospitals to hold claims until our systems were ready or hold the claims ourselves. We concluded that we could not request hospitals to hold their claims, thus interrupting their stream of

payment for outpatient services for a potentially significant period of time. In addition, many of our intermediaries do not have sufficient electronic storage space to hold claims for nearly as long as it will take for our systems to be fully tested.

Even if sufficient storage capacity were available, holding claims until HCFA was fully able to implement the PPS would lead to problems. These would have included extensive operational delays at the intermediaries to process and pay the claims once the software became available. Considerable risk of improper or inaccurate payment exists in later working off what would be a crippling backlog of held claims in an expedited manner. Therefore, given our need to accurately program and test the PPS, it would not be feasible, given our operational limitations, to maintain the previous July 1 effective date. Because of the uncertainty for providers, beneficiaries, and HCFA contractors that would be caused by holding claims for any significant period of time, we do not believe that such a course of action provides a viable alternative to a brief delay in the effective date of the PPS.

We had hoped and planned to be able to implement the PPS on July 1, 2000 as stated in the April final rule with comment period. We regret that we must postpone the benefits of the new payment system for beneficiaries, even for only one month. Nevertheless, because of the significance of the considerations discussed above and the unacceptable risk to the successful implementation of the PPS that would be incurred if we chose to move forward as originally planned and implement the PPS on July 1, we have recognized the need to postpone the effective date announced in the April rule.

As stated earlier, the changes to § 412.24(d)(6), new § 413.65, and the changes to § 489.24(h), § 489.2 and § 489.3 will still be effective on October 10, 2000.

II. Impact Statement

In the April 7, 2000 final rule, we discussed the changes the BBA and BBRA will have on payments to hospitals and beneficiaries. Because we are delaying the implementation of the final rule, the current payment rates required under pre-BBA rules will remain in effect for an additional 32 days which may have a significant impact on a substantial number of small entities.

(Catalog of Federal Domestic Assistance 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 22, 2000.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: June 23, 2000.

Michael F. Mangano,

Principal Deputy Inspector General, Department of Health and Human Services.

Approved: June 23, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–16586 Filed 6–29–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 991223347–9347–01; I.D. 120299C]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Extension of Emergency Rule

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

ACTION: Extension of emergency rule effectiveness period.

SUMMARY: This action extends an existing emergency rule that was published in conjunction with the annual specifications and management measures for the Pacific coast groundfish fishery off Washington, Oregon, and California in 2000. The emergency authority was used to implement and designate as routine a number of management measures that are intended to achieve rebuilding plans for overfished stocks, reduce bycatch, prevent overfishing, maximize the harvest of healthy stocks while protecting and rebuilding overfished and depleted stocks, and equitably distribute the burdens among the different fishing sectors. The emergency rule is authorized by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The emergency rule published January 4, 2000, beginning at 65 FR 221, is extended until the effective date of the annual specifications and management measures for the 2001 groundfish fishery, but no later than January 3, 2001. The 2001 annual specifications and management measures will be published in the **Federal Register**.

ADDRESSES: Copies of the environmental assessment/regulatory impact review are available from William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0070; or Rodney McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Katherine King at 206–526–6140.

SUPPLEMENTARY INFORMATION: NMFS is extending an emergency rule (65 FR 221, January 4, 2000) which otherwise would expire on July 3, 2000. The emergency authority was used to implement and designate as routine a number of management measures that were designed to achieve rebuilding plans for overfished stocks, reduce bycatch, prevent overfishing, maximize the harvest of healthy stocks while protecting and rebuilding overfished and depleted stocks, and equitably distribute the burdens among the different fishing sectors. NMFS is extending the rule pursuant to the emergency rulemaking authority of the Secretary of Commerce (Secretary) under the Magnuson-Stevens Act, 16 U.S.C. 1855(c)(3)(B). Amendment 13 to the FMP, currently under development, includes provisions that would authorize, on a permanent basis, future use of the provisions implemented under the emergency rule. This action is necessary to maintain the management regime approved by the Secretary, implemented on January 1, 2000, pending Secretarial review and approval of Amendment 13. No changes to the emergency rule are made by this extension.

Background

In the past, annual management measures have been primarily set through ''routine'' management procedures that consisted of adjusting commercial trip limits and recreational bag limits. For most species, the limited entry commercial trip limit did not vary with the type of gear used. However, because of the drastic reductions in harvest limits for many species which were necessary in 2000, and the multispecies characteristic of the fishery, the existing routine management measures did not produce sufficient and appropriately targeted harvest reductions. Therefore, at its November 1999 meeting, the Pacific Fishery Management Council (Council) recommended that NMFS implement an emergency rule for 2000 that would address these concerns. At the time,

Amendment 13 was under development, and the Council expected that Amendment 13 would authorize future use of the emergency provisions on a permanent basis. Accordingly, an emergency rule with a request for public comments was prepared in conjunction with the annual specifications and management measures for 2000. It was filed with the **Federal Register** on December 27, 1999, published on January 4, 2000 (65 FR 221), and became effective on January 1, 2000. A detailed discussion on the management measures, rebuilding plans, and rationale for the emergency action is included in the preamble to the emergency rule/annual management measures (65 FR 221, January 4, 2000) and the environmental assessment/regulatory impact review for that action, and is not restated in this extension.

Public Comments

NMFS received a number of comments on the emergency rule and annual specifications and management measures, and already has, or will, respond to those comments individually, with one exception. NMFS received, as a comment, a copy of the complaint that was filed in Federal District Court in the Northern District of California, in the case of *Solomon* v. *Daley*, Civil No. 00–0383. NMFS will respond to this comment in the context of that lawsuit rather than in the extension to the emergency rule.

Classification

This emergency rule has been determined to be not significant for purposes of Executive Order 12866.

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

Dated: June 27, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–16638 Filed 6–29–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 061500D]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

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

ACTION: Harpoon category closure.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) Harpoon category annual quota for the 2000 fishing year will be attained by June 26, 2000. Therefore, the 2000 Harpoon category fishery will be closed effective at 11:30 p.m. on June 26, 2000. This action is being taken to prevent overharvest of the Harpoon category quota.

DATES: Effective 11:30 p.m. local time on June 26, 2000, through May 31, 2001.

FOR FURTHER INFORMATION CONTACT: Pat Scida or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27(a) subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories.

Harpoon Category Closure

NMFS is required, under § 635.28 (a)(1), to file with the Office of the Federal Register for publication notification of closure when a BFT quota is reached or is projected to be reached. On and after the effective date and time of such notification, for the remainder of the fishing year or for a specified period as indicated in the notice, fishing for, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

The proposed 2000 BFT quota specifications issued pursuant to 50 CFR 635.27 would set a quota of 54.1 mt of large medium and giant BFT to be harvested from the regulatory area by vessels permitted in the Harpoon category during the 2000 fishing year (65 FR 33513, May 24, 2000). NMFS expects to issue final quota specifications by early July 2000, and based on comments received and the international quota mandated by ICCAT, does not anticipate changes to the proposed Harpoon category quota. Based on reported landings and effort, NMFS projects that this quota will be reached by June 26, 2000. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT by vessels in the Harpoon category must cease at 11:30 p.m. local time on June 26, 2000.

The intent of this closure is to prevent overharvest of the quota proposed for the Harpoon category. In the event the Harpoon category landings amount to less than the final Harpoon category quota, NMFS would consider reopening the fishery.

Classification

This action is taken under §§ 635.27(a) and 635.28 (a)(1) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: June 26, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–16526 Filed 6–26–00; 4:35 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991228352–0012–02; I.D. 062100A]

Fisheries of the Exclusive Economic Zone Off Alaska; Rockfish and Pacific Ocean Perch in the Central and Eastern Regulatory Areas of the Gulf of Alaska

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

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific ocean perch and northern rockfish in the Central Regulatory Area, and Pacific ocean perch in the Eastern Regulatory Area of the Gulf of Alaska (GOA) by catcher vessels that are non-exempt under the American Fisheries Act (AFA). This action is necessary to allow non-exempt catcher vessels to participate in these fisheries consistent with regulations implementing the AFA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 4, 2000, until 2400 hours, A.l.t., December 31, 2000, or until NMFS publishes further notice in the **Federal Register**.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and

Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The amount of the interim 2000 GOA AFA catcher vessel sideboards in the Central Regulatory Area for Pacific ocean perch and northern rockfish are 639 metric tons (mt) and 138 mt respectively and for Pacific ocean perch in the Eastern Regulatory Area, 57 mt. These amounts were established by the Emergency Interim Rule to Implement Major Provisions of the American Fisheries Act (65 FR 4520, January 28, 2000). This emergency interim rule was extended through January 16, 2001 (65 FR 39107, June 23, 2000), in accordance with § 679.20(c)(2)(i).

The Administrator, Alaska Region, NMFS (Regional Administrator), has established a directed fishing allowance and bycatch amounts to support other anticipated groundfish fisheries for this component as follows: For the Central Regulatory Area Pacific ocean perch fishery, the directed fishing amount is 619 mt, and the bycatch amount is 20 mt. For the Central Regulatory Area northern rockfish fishery the directed fishing amount is 118 mt, and the bycatch amount is 20 mt. For the Eastern Regulatory Area Pacific ocean perch fishery, the directed fishing amount is 52 mt and the bycatch amount is 5 mt. These fisheries were closed to directed fishing by non-exempt AFA vessels on January 21, 2000 (65 FR 4520, January 28, 2000).

NMFS has determined that as of July 4, 2000, sufficient amounts remain in these directed fishing allowances to allow for the fisheries to occur. Therefore, NMFS is terminating the previous closures and is opening directed fishing for Pacific ocean perch in the Central and Eastern Regulatory Areas, and for northern rockfish in the Central Regulatory Area by catcher vessels that are non-exempt under the AFA.

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow participation of catcher vessels that are non-exempt under the AFA. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

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

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

Dated: June 26, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–16535 Filed 6–29–00; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 127
Friday, June 30, 2000

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

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212, 236, and 241

[INS No. 2029–00; AG Order No. 2310–2000]

RIN 1115–AF82

Detention of Aliens Ordered Removed

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule would amend the Immigration and Naturalization Service (Service) regulations by providing a uniform review process governing the detention of criminal, inadmissible, and other aliens, excluding Mariel Cubans, who have received a final administrative removal order but whose departure has not been effected within the 90-day removal period. Such a process is necessary to ensure periodic custody reviews for post-order cases and consistency in decision-making. Since the Service is developing a specialized, ongoing administrative review process for these custody determinations, this rule would eliminate the appellate role of the Board of Immigration Appeals in post-final order custody determinations. This rule also would amend the Service's regulations to reflect the authority of the Commissioner, and through her, other designated Service officials, to release certain aliens from Service custody, issue orders of supervision, and grant stays of removal.

DATES: Written comments must be submitted on or before July 31, 2000.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 2029–00 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Joan S. Lieberman, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street NW, Room 6100, Washington, DC 20536, telephone (202) 514–2895 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Why is the Service Issuing This Proposed Rule?

Congress has progressively acted to restrict the release into the community of aliens convicted of certain crimes, beginning with amendments affecting aggravated felons in the Anti-Drug Abuse Act of 1988, Pub. L. 100–690, and the Immigration Act of 1990, Public Law 101–649. Congress extended these restrictions to other categories of crimes in the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104–132 and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208. Under prior law, criminal aliens who were referred to as deportable under former section 242 of the Immigration and Nationality Act (Act) generally could only be detained for a period of 6 months pending removal after the issuance of a final deportation order. This restriction has been removed. Pursuant to section 241(a)(6) of the Act, 8 U.S.C. 1231(a)(6), certain classes of aliens may be detained in the discretion of the Attorney General beyond the 90-day removal period, including aliens that the Attorney General determines constitute a risk to the community or are unlikely to comply with the order of removal.

As a result of this change in the law and other factors, there has been a considerable increase in the number of aliens in immigration custody who have a final order of removal but who the Service is unable to remove during the removal period set out in section 241(a)(1) of the Act, 8 U.S.C. 1231(a)(1).

Two courts of appeals have upheld the Attorney General's authority to continue detention after the removal period. *See Duy Dac Ho* v. *Greene*, 204 F.3d 1045 (10th Cir. 2000); *Zadvydas* v. *Underdown*, 185 F.3d 279 (5th Cir. 1999). The Ninth Circuit recently held, in *Ma* v. *Reno*,—F.3d —, 2000 WL 358445 (9th Cir. Apr. 10, 2000), that such detention may not be extended more than a reasonable time beyond the statutory removal period, but the Department of Justice is seeking further review of that decision. This rule will provide procedures to govern detention of aliens with final orders, to the extent that they continue to be detained after the expiration of the removal period.

The Department of Justice has determined that a separate custody review process is appropriate for aliens who are detained beyond the 90-day removal period. This action permits a comprehensive and fair review of post-order cases by establishing multiple levels of review to determine whether certain detained aliens may be released from custody, and sets forth the procedures governing such release or continued detention. As was the case with the implementation of the Mariel Cuban Review Plan, this review process is intended to balance the need to protect the American public from potentially dangerous aliens who remain in the United States contrary to law with the humanitarian problems created by another country's unjustified delay or refusal to accept repatriation of its nationals.

Currently, 8 CFR 241.4 provides the general procedures governing the detention of criminal, inadmissible, and other aliens who have received a final administrative removal order but whose departure has not been effected within the 90-day removal period specified in section 241(a)(1) of the Act, 8 U.S.C. 1231(a)(1). In 1999, pending promulgation of more specific procedures by regulation and to institute a more uniform process nationwide, the Service issued a series of memoranda to provide specific guidance to field offices concerning implementation of interim procedures governing post-order custody cases. *Detention Procedures for Aliens Whose Immediate Repatriation is Not Possible or Practicable*, February 3, 1999; *Supplemental Detention Procedures*, April 30, 1999; *Interim Changes and Instructions for Conduct of Post-Order Custody Reviews*, August 6, 1999 (collectively ''the Pearson memoranda'').

This rule establishes permanent procedures for post-order custody reviews. The rule will assist the decision maker in determining whether an alien is an appropriate candidate for release from custody after the expiration of the removal period. When the review procedures are adopted in final form, they will supersede the Pearson

memoranda. The new procedures are modeled after those governing the Mariel Cubans at 8 CFR 212.12 and consist of a file review with the opportunity for a panel interview and recommendation, and a final decision by a separate Service Headquarters unit, the Headquarters Post-Order Detention Unit (HQPDU). Although Mariel Cuban procedures will continue to be governed separately, the review process is similar for both groups of aliens.

Who is Covered Under This Proposed Rule?

This proposed rule would establish a permanent review procedure that would apply to noncriminal aliens as well as inadmissible and criminal aliens whose release after expiration of the 90-day removal period presents a significant risk of noncompliance with the order of removal or a danger to public safety. The Attorney General is authorized to detain these aliens beyond the removal period, as necessary, consistent with section 241(a)(6) of the Act, 8 U.S.C. 1231(a)(6), until they can be removed from the United States.

This permanent review procedure will govern all post-order custody reviews with the exception of Mariel Cubans whose parole under section 212(d)(5) of the Act, 8 U.S.C. 1182(d)(5), is governed by the provisions of 8 CFR 212.12. Mariel Cuban custody reviews will continue to be conducted pursuant to those provisions.

What Are the Proposed Procedures for Post-Order Custody Reviews?

Under the proposed rule, the district director maintains the responsibility for the initial custody review when the alien's immediate repatriation is proper but not practicable at the expiration of the removal period. For the initial post-order custody review at the expiration of the removal period (the 90-day custody review), the district director will conduct a file review. In most cases, it will be unnecessary for the district director to undertake a personal interview since the alien's immigration proceedings have recently concluded, and the information of record is recent. The district director has the discretion to conduct a personal or telephonic interview if he or she finds that it will assist him or her in making a custody determination. Further, the alien will be provided with the opportunity to present any relevant written information the alien desires in support of his or her release into the community.

After the 90-day custody review, the district director will notify the alien in writing that he or she is to be released from custody, or that the alien will be continued in detention pending repatriation or further review of his or her custody status.

Where the district director has notified the alien that he or she will continue to be detained pending repatriation, the district director's authority to reconsider an alien's custody status may be extended for an additional period of up to 3 months after expiration of the removal period. The additional 3-month period will allow the district director to continue efforts to obtain the necessary travel documents to effect the alien's removal before the detention authority is transferred to Service Headquarters.

During the additional 3-month period, the alien may submit a written request to the district director for further review of his or her custody status. The district director shall consider information that the alien submits in support of his or her release from detention demonstrating a material change in circumstances. The district director will provide a written response as appropriate to the alien's submission of such new information and may, in the exercise of discretion, conduct any further review of the alien's custody status that he or she deems appropriate. The district director retains the authority to release the alien during this period as well.

If the alien has not been repatriated or released, detention authority transfers to the newly designated Service component, the HQPDU, under the authority of the Executive Associate Commissioner, Field Operations (Executive Associate Commissioner), either at the end of the 90-day removal period or at the expiration of the 3-month extension period. Under either circumstance, the HQPDU will ordinarily commence a custody review within 30 days of the transfer of detention authority or as soon as possible thereafter should unforeseen or emergent circumstances arise. The alien will receive written notice of the custody review approximately 30 days prior to the scheduled review. The HQPDU will conduct all further custody determinations as long as the alien remains in custody pending removal. Subsequent custody reviews will be conducted at annual intervals (or more frequently in the sole discretion of the HQPDU).

When the detention authority transfers to the HQPDU, that unit will conduct a file review for each alien previously ordered detained by the district director. If the file review does not result in a release decision, the alien will be given the opportunity for a panel interview. The two-member panel will be chosen from professional staff of the Service. The interview will be conducted in person and a translator will be provided if the Service official determines that a translator's assistance is appropriate. As under the Mariel Cuban Review Plan, the interviewing panel will make a custody recommendation to the HQPDU. Upon receipt of the panel's recommendation, the HQPDU shall determine whether to detain or grant release consistent with the delegation of discretionary authority. The decision of the HQPDU will be final and will not be subject to further administrative review.

The HQPDU is not bound by the panel's recommendation. The HQPDU retains full statutory authority for custody determinations under sections 241(a)(6), 8 U.S.C. 1231(a)(6), and (for inadmissible aliens) 212(d)(5) of the Act, 8 U.S.C. 1182(d)(5). The panel's recommendation is designed to serve as an important guide to the exercise of discretion for the HQPDU, but the decision maker must be free to assess all of the circumstances in arriving at a final custody determination. The decision maker must also take into consideration changes in foreign and domestic affairs, the availability of fiscal resources, public policy and humanitarian concerns, and other factors that could weigh for or against the decision in an individual case.

The subsequent HQPDU periodic review, to be conducted within one year of a refusal to grant release under these procedures or as soon as practicable thereafter in case of unforeseen circumstances or an emergent situation, will address whether the alien can be released into the community if the alien has not been repatriated since the last review. The HQPDU may conduct a custody review at more frequent intervals at its sole discretion and consider written submissions demonstrating any material change in circumstances that supports the alien's release during the interval between reviews. Material change does not include mere disagreement with the decision denying release. The HQPDU will give a written response to the alien's submission of new information as appropriate under the rule. Written submissions, whether to the district director or the HQPDU, must be in English or they may not be given consideration.

The alien may be assisted by a person of his or her choice in preparing or submitting information in response to the notice of custody review. The Service has followed the guidelines set forth in 8 CFR 212.12(d)(4)(ii) (regarding representation of an alien before a

Mariel Cuban parole panel) rather than the more formal rules regarding attorney representatives at 8 CFR 292.1. Both 8 CFR 212.12 and the proposed rule allow the alien to be accompanied by a person of his or her choice at the panel interview (subject to the discretion of the institution and panel). It may be difficult for the detained alien to secure the services of a licensed attorney for each annual review, or counsel may change between reviews. Further, giving the alien discretion in selecting who will assist him or her in preparation of materials for submission to the district director and who will accompany him or her to the panel proceeding promotes two important Service objectives. These objectives are to make this process as flexible and nonadversarial as possible and to promote the alien's level of comfort with the proceedings. The alien's representative will be required to complete an INS Form G–28 (Notice of Entry of Appearance as Attorney or Representative) at the time of the interview or prior to reviewing the detainee's records. Attached to any notice of a file review or interview, the Service will provide a list of free or low cost attorneys and representatives who are located near the alien's place of confinement.

Although the Service will forward any notice or decision relating to the custody review to counsel or other representative of record through regular mail, the alien bears primary responsibility for ensuring that the individual providing assistance to him or her is aware of any notices, decisions, or other documentation relating to the custody review. Experience with the Cuban Review Plan has demonstrated that an alien may have several representatives successively, or may be assisted by an attorney, other person, or organization whose representation is not known to the Service.

Any person assisting the alien should not answer for the alien but assist the alien in the latter's presentation of information supporting a release decision. Whether the alien's case is before the district director for review or the panel for an interview, the purpose of the review process is to collect information. Because the decision maker must evaluate the suitability of the alien for release, it is important for the alien to address the district director or panel directly and be able to speak freely. The district director and panel need to hear from the alien rather than his or her representative.

Both the Executive Associate Commissioner through the HQPDU and the district director have the authority to withdraw approval for release and to revoke release or parole in the exercise of discretion. Reasons for withdrawal of approval for release or revocation include the Service's ability to obtain a travel document and remove the alien, the alien's adverse conduct while awaiting release, the decision maker's belief that the alien's actions while in the community pose a threat to public safety, or any other circumstance that indicates that release would no longer be appropriate. If the decision maker withdraws release approval or revokes the alien's release or parole, the alien will receive written notification specifying the reasons for the withdrawal of approval for release or revocation of post-order release or parole.

This rule addresses Service procedures for conducting post-order custody reviews. It does not circumscribe the exercise of the Commissioner's authority to direct otherwise, as appropriate. Section 2.1. of title 8 of the Code of Federal Regulations delegates the authority vested with the Attorney General to the Commissioner. Section 241(a)(3) of the Act vests authority with the Attorney General to promulgate regulations governing supervision of aliens beyond the removal period and section 241(c)(2) vests authority with the Attorney General to grant stays of removal. Therefore, the Commissioner already has the authority to release certain aliens from Service custody, issue orders of supervision, and grant stays of removal. As directed by the Commissioner or Deputy Commissioner, Service officials have authority to release certain aliens from Service custody, issue orders of supervision, and grant stays of removal. Therefore, this rule also amends 8 CFR 241.4, 241.5 and 241.6 to reflect the concurrent authority of the Commissioner and other designated Service officials.

What Other Changes Would This Rule Make?

This rule would terminate the existing procedure of appeal to the Board of Immigration Appeals (Board) under 8 CFR 236.1 for an alien who receives an unfavorable custody decision from the district director. *See Matter of Saelee,* Interim Decision 3427 (BIA 2000). Since these aliens have final orders of removal, all legal issues involving removability (and any discretionary relief from removal, if available) have been resolved through the Executive Office for Immigration Review or through alternate procedures. Custody determinations at this stage of the process involve separate and distinct issues, and the Service has the knowledge and expertise required to make these custody decisions.

The proposed rule for permanent procedures provides for an automatic multi-tiered annual review process subsequent to the district director's 90-day review as long as the alien remains in custody. The detainee is assured a periodic and thorough review that does not depend on the alien's request for a custody review or the filing of an appeal, but is required at regular intervals by regulation. This review process will ensure timely, scheduled reviews of each alien's case.

Accordingly, in order to implement a single comprehensive review process for post-order custody cases, this proposed rule removes all references to post-order detention from 8 CFR 236.1. As revised, 8 CFR 236.1 would govern detention issues only for aliens who have not yet received a final removal order.

Any case pending before the Board on the effective date of this rule when it is published as a final rule will be completed by the Board. Should the alien decide to withdraw his or her appeal, the Service shall continue to conduct custody reviews under the provisions of this rule.

This proposed regulation also removes 8 CFR 212.13 and any references to that section in 8 CFR 212.5 and 8 CFR 212.12. Section 212.13 established a single Departmental parole review for all excludable Mariel Cubans who on the effective date of the regulation were detained by virtue of the Attorney General's authority under the Act and whose parole had been denied after the exhaustion of the review procedures of 8 CFR 212.12. The Departmental Review Panels have completed the review of the cases of detainees eligible for such review. Thus, there is no longer a need for this regulation. This action will not otherwise affect the Cuban Review Plan set forth in 8 CFR 212.12.

What Must the Alien Demonstrate to Show His or Her Suitability for Release?

The alien must be able to show to the satisfaction of the decision maker that he or she does not constitute a danger to public safety or a flight risk pursuant to the criteria set forth in the proposed regulation.

If a Travel Document Can Be Obtained, How Is the Custody Review Process Affected?

Detention or release of aliens with a final order of removal is tied to the Service's mission to enforce the immigration laws and protect the interests of the United States, pending

the aliens' eventual removal from the United States. Accordingly, district directors will continue to make efforts to obtain travel documents even after review authority has transferred to the HQPDU. Headquarters Detention and Deportation, Office of Field Operations will also assist in the effort to secure travel documents.

The ability to secure a travel document by itself supports a decision to continue detention pending the removal of the alien and obviates the need for further custody review because it means the alien can be deported. *See* 8 CFR 212.12(g)(1). Custody reviews may be pretermitted in the case of an alien for whom travel documents are available. Pending litigation, an administrative or judicial stay, or other barrier to removal does not entitle an alien who can be repatriated to release within the United States pending resolution of the underlying action or event. Aliens whose removal is deferred under 8 CFR 208.17 may be considered for release.

Will There Be Special Release Conditions Under the Proposed Rule and Will Work Authorization Be Granted?

Release conditions and work authorization for aliens subject to a final order of removal will continue to be governed by 8 CFR 241.5. The district director or HQPDU may wish to impose conditions, in addition to those enumerated by regulation, such as that the alien obey all laws, not associate with any persons involved in criminal activity, not associate with anyone convicted of a felony without permission, not carry firearms or other dangerous weapons, or such other conditions as the decision-maker deems appropriate. Under 8 CFR 241.5(c), a grant of work authorization is discretionary but requires the decision maker to make an initial finding that the alien cannot be immediately removed because no country will accept the alien or that the alien's removal is impracticable or contrary to the public interest.

Sponsorship and evidence of financial support may be required as a precursor to release under the proposed rule. The Service has determined that appropriate sponsorship is in the best interest of the alien and community when an alien is approved for release pending repatriation. *See, e.g., Fernandez-Roque* v. *Smith,* 734 F. 2d 576 (11th Cir. 1984). Although the Service reserves the authority to impose conditions of release, including appropriate sponsorship, this rule does not compel the Government to tailor existing programs to the needs of individual aliens or to create or fund additional programs if suitable sponsorship is not located or available for an alien.

If an alien is detained in a facility that does not provide any rehabilitative programs, no negative inference respecting release will be drawn against the alien in making a custody determination based on the fact that the alien did not participate in such programs. However, if the facility has such programs available to the alien but the alien refuses to participate, that fact may be considered by the decision-maker.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule would provide a more uniform review process governing the detention of criminal, inadmissible, and other aliens who have received a final administrative removal order but whose departure has not been effected within the 90-day removal period. This rule does not affect small entities as that term is defined in 5 U.S.C. 601(6).

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

Executive Order 12866

This rule is considered by the Department of Justice, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

List of Subjects

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 241

Administrative practice and procedure, Aliens, Immigration.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252, 8 CFR part 2.

§ 212.5 [Amended]

2. Section 212.5(f) is amended by revising the phrase ''§§ 212.12 and 212.13'' to read ''§ 212.12.;''

§ 212.12 [Amended]

3. Section 212.12 is amended by:

a. In paragraph (b) introductory text, revising the phrase ''Except as provided in § 212.13, the authority'' to read ''The authority;'' and by

b. In paragraph (g)(2), removing the word ''either'' and removing the phrase ''or § 212.13, whichever is later.''

§ 212.13 [Removed]

4. Remove § 212.13.

PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

5. The authority citation for part 236 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1362; sec. 303(b) of Div. C of Pub. L. No. 104–208; 8 CFR part 2.

6. Section 236.1 is amended by:

a. Removing the last sentence in paragraph (d)(1);

b. Revising paragraph (d)(2); and by

c. Removing paragraph (d)(3)(iii), to read as follows:

§ 236.1 Apprehension, custody, and detention.

* * * * *

(d) * * *

(2) *Application to the district director.* After expiration of the 7-day period in paragraph (d)(1) of this section, the respondent may request review by the district director of the conditions of his or her release.

* * * * *

PART 241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

7. The authority citation for part 241 continues to read as follows:

Authority: 8 U.S.C. 1103, 1223, 1227, 1251, 1253, 1255, and 1330; 8 CFR part 2.

8. Section 241.4 is revised to read as follows:

§ 241.4 Continued detention of inadmissible, criminal, and other aliens beyond the removal period.

(a) *Scope.* The authority to continue an alien in custody or grant release or parole under sections 241(a)(6) and 212(d)(5)(A) of the Act shall be exercised by the Commissioner or Deputy Commissioner, as follows: Except as otherwise directed by the Commissioner or her designee, the Executive Associate Commissioner Field Operations or the district director may continue an alien in custody beyond the removal period described in section 241(a)(1) of the Act pursuant to the procedures described in this section. Except as provided in paragraph (b)(2) of this section, the provisions of this section apply to custody determinations for the following groups of aliens:

(1) An alien who is inadmissible under section 212 of the Act, including an excludable alien convicted of one or more aggravated felony offenses and subject to the provisions of section 501(b) of the Immigration Act of 1990, Public Law 101–649 (codified at 8 U.S.C. 1226(e)(1) through (3)(1994));

(2) An alien who is removable under section 237(a)(1)(C) of the Act;

(3) An alien who is removable under sections 237(a)(2) or 237(a)(4) of the Act, including deportable criminal aliens whose cases are governed by former section 242 of the Act prior to amendment by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, Div. C; and

(4) An alien who is removable under any other section of the Act, including an alien granted withholding or deferral of removal under 8 CFR part 208, may be detained beyond the removal period if the decision maker determines that the alien is unlikely to comply with the removal order or is a risk to the community.

(b) *Applicability to particular aliens*—(1) *Motions to reopen.* An alien who has filed a motion to reopen immigration proceedings for consideration of relief from removal, including withholding or deferral of removal pursuant to 8 CFR 208.16 or 208.17, shall remain subject to the provisions of this section unless the motion to reopen is granted. Section 236 of the Act and 8 CFR 236.1 govern custody determinations for aliens who are in pending immigration proceedings before the Executive Office for Immigration Review.

(2) *Parole for certain Cuban nationals.* The review procedures in this section do not apply to any Mariel Cuban who is being detained by the Service pending an exclusion or removal proceeding, or pending his or her return to Cuba or removal to another country. Instead, the determination whether to release on parole, or to revoke such parole, or to detain, shall in the case of a Mariel Cuban be governed by the procedures in 8 CFR 212.12.

(c) *Delegation of authority.* The Attorney General's statutory authority to make custody determinations under sections 241(a)(6) and 212(d)(5)(A) of the Act when there is a final order of removal, is delegated as follows:

(1) *District directors.* The initial custody determination described in paragraph (h) of this section and any further custody determination concluded in the 3-month period immediately following expiration of the 90-day removal period, subject to the provisions of paragraph (c)(2) of this section, will be made by the district director having jurisdiction over the alien. The district director shall maintain appropriate files respecting each detained alien reviewed for possible release, and shall have authority to determine the order in which the cases shall be reviewed, and to coordinate activities associated with these reviews in his or her respective district.

(2) *Headquarters Post-Order Detention Unit (HQPDU).* For any alien the district director refers for further review after the 90-day removal period, or any alien who has not been released or repatriated by the expiration of the 3-month period after the 90-day review, all further custody determinations will be made by the Executive Associate Commissioner, acting through the HQPDU.

(3) *The HQPDU review plan.* The Executive Associate Commissioner shall appoint a Director of the HQPDU. The Director of the HQPDU shall have authority to establish and maintain appropriate files respecting each detained alien to be reviewed for possible release, to determine the order in which the cases shall be reviewed, and to coordinate activities associated with these reviews.

(4) *Additional delegation of authority.* All references to the Executive Associate Commissioner and district director in this section shall be deemed to include any person or persons (including a committee) designated in writing by the district director or Executive Associate Commissioner to exercise powers under this section.

(d) *Custody determinations.* A copy of any decision by the district director or Executive Associate Commissioner to release or to detain an alien shall be provided to the detained alien. A decision to retain custody shall briefly set forth the reasons for the continued detention. A decision to release may contain such special conditions as are considered appropriate in the opinion of the Service. Notwithstanding any other provisions of this section, there is no appeal from the district director's or the Executive Associate Commissioner's decision.

(1) *Showing by the alien.* The district director or the Executive Associate Commissioner may release an alien if the alien demonstrates to the satisfaction of the Attorney General or her designee that his or her release will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight pending such alien's removal from the United States. The district director or the Executive Associate Commissioner may also, in accordance with the procedures and consideration of the factors set forth in this section, continue in custody any alien described in paragraphs (a) and (b)(1) of this section.

(2) *Service of decision and other documents.* All notices, decisions, or other documents in connection with the custody reviews conducted under this section by the district director or Executive Associate Commissioner shall be served on the alien, in accordance with 8 CFR 103.5a, by the Service district office having jurisdiction over the alien. Release documentation (including employment authorization if appropriate) shall be issued by the district office having jurisdiction over the alien in accordance with the custody determination made by the district director or by the Executive Associate Commissioner. Copies of all such documents will be retained in the alien's record and forwarded to the HQPDU.

(3) *Alien's representative.* The alien's representative is required to complete an INS Form G–28, Notice of Entry of Appearance as Attorney or Representative, at the time of the interview or prior to reviewing the detainee's records. The Service will forward by regular mail a copy of any notice or decision that is being served on the alien only to the attorney or representative of record. The alien remains responsible for notification to any other individual providing assistance to him or her.

(e) *Criteria for release.* Before making any recommendation or decision to release a detainee, a majority of the Review Panel members, or the Director of the HQPDU in the case of a record review, must conclude that:

(1) Travel documents for the alien are not available or, in the opinion of the Service, immediate removal, while proper, is otherwise not practicable or not in the public interest;

(2) The detainee is presently a non-violent person;

(3) The detainee is likely to remain nonviolent;

(4) The detainee is not likely to pose a threat to the community following his or her release;

(5) The detainee is not likely to violate the conditions of his or her release; and (6) The detainee does not pose a significant flight risk.

(f) *Factors for consideration.* The following factors should be weighed in considering whether to recommend further detention or release of a detainee:

(1) The nature and number of disciplinary infractions or incident reports received when incarcerated or while in Service custody;

(2) The detainee's criminal conduct and criminal convictions, including consideration of the nature and severity of the alien's convictions, sentences imposed and time actually served, probation and criminal parole history, evidence of recidivism, and other criminal history;

(3) Any available psychiatric and psychological reports pertaining to the detainee's mental health;

(4) Evidence of rehabilitation including institutional progress relating to participation in work, educational, and vocational programs, where available;

(5) Favorable factors, including ties to the United States such as the number of close relatives residing here lawfully;

(6) Prior immigration violations and history;

(7) The likelihood that the alien is a significant flight risk or may abscond to avoid removal, including history of escapes, failures to appear for judicial or other proceedings, absence without leave from any halfway house or sponsorship program, and other defaults; and

(8) Any other information that is probative of whether the alien is likely to adjust to life in a community, is likely to engage in future acts of violence, is likely to engage in future criminal activity, is likely to pose a danger to the safety of himself or herself or to other persons or to property, or is likely to violate the conditions of his or her release from immigration custody pending removal from the United States.

(g) *Travel documents and docket control for aliens continued in detention beyond the removal period*—(1) *In general.* The district director shall continue to undertake appropriate steps to secure travel documents for the alien both before and after the expiration of the removal period. If the district director is unable to secure travel documents within the removal period, he or she shall apply for assistance from Headquarters Detention and Deportation, Office of Field Operations. The district director shall promptly advise the HQPDU Director when travel documents are obtained for an alien whose custody is subject to review by the HQPDU. The Service's determination that receipt of a travel document is likely may by itself warrant continuation of detention pending the removal of the alien from the United States.

(2) *Availability of travel document.* In making a custody determination, the district director and the Director of the HQPDU shall consider the ability to obtain a travel document for the alien. If it is established at any stage of a custody review that, in the judgment of the Service, travel documents can be obtained, or such document is forthcoming, the alien will not be released unless immediate removal is not practicable or in the public interest.

(3) *Removal.* The Service will not conduct a custody review under these procedures when the Service notifies the alien that it is ready to execute an order of removal.

(4) *Alien's cooperation.* Release will be denied in accordance with section 241(a)(1)(C) of the Act if the alien fails or refuses to cooperate in the process of obtaining a travel document.

(h) *District director's custody review procedures.* The district director's custody determination will be developed in accordance with the following procedures:

(1) *Record review.* The district director will conduct the initial custody review. For aliens described in paragraphs (a) and (b)(1) of this section, the district director will conduct a file review prior to the expiration of the 90-day removal period. This initial post-order custody review will consist of a review of the alien's records, and any written information submitted in English to the district director by or on behalf of the alien. However, the district director may in his or her discretion schedule a personal or telephonic interview with the alien as part of this custody determination. The district director may also consider any other relevant information relating to the alien or his or her circumstances and custody status.

(2) *Notice to alien.* The district director will provide written notice to the detainee approximately 30 days in advance of the pending record review so that the alien may submit information in writing in support of his or her release. The alien may be assisted by a person of his or her choice, subject to the institution and panel's discretion, in preparing or submitting information in response to the district director's notice. Such assistance shall be at no expense to the Government. If the alien or his or her representative requests additional time to prepare materials beyond the time when the district director expects to conduct the file review, such a request will constitute a waiver of the requirement that the review occur prior to the expiration of the removal period.

(3) *Factors for consideration.* The district director's review will include but is not limited to consideration of the factors described in paragraph (f) of this section. Before making any decision to release a detainee, the district director must be able to reach the conclusions set forth in paragraph (e) of this section.

(4) *District director's decision.* The district director will notify the alien in writing that he or she is to be released from custody, or that he or she will be

continued in detention pending repatriation or further review of his or her custody status.

(5) *District office staff.* The district director may delegate the authority to conduct the custody review, develop recommendations, or render the custody or release decision to those persons directly responsible for detention within his or her district. This includes the deputy district director, the assistant director for detention and deportation, the officer-in-charge of a detention center, persons acting in such capacities, or such other persons as the district director may designate from the professional staff of the Service.

(i) *Determinations by the Executive Associate Commissioner.* Determinations by the Executive Associate Commissioner to release or retain custody of aliens shall be developed in accordance with the following procedures.

(1) *Review panels.* The HQPDU Director shall designate a panel or panels to make recommendations to the Executive Associate Commissioner. A Review Panel shall, except as otherwise provided, consist of two persons. Members of a Review Panel shall be selected from the professional staff of the Service. All recommendations by the two member Review Panel shall be unanimous. If the vote of the two-member Review Panel is split, it shall adjourn its deliberations concerning that particular detainee until a third Review Panel member is added. The third member of any Review Panel shall be the Director of the HQPDU or his or her designee. A recommendation by a three-member Review Panel shall be by majority vote.

(2) *Record review.* Initially, and at the beginning of each subsequent review, the HQPDU Director or a Review Panel shall review the alien's file. Upon completion of this record review, the HQPDU Director or the Review Panel may issue a written recommendation that the alien be released and reasons therefore.

(3) *Personal interview.* (i) If the HQPDU Director does not accept a panel's recommendation to grant release after a record review, or if the alien is not recommended for release, a Review Panel shall personally interview the detainee. The scheduling of such interviews shall be at the discretion of the HQPDU Director. The HQPDU Director will provide a translator if he or she determines that such assistance is appropriate.

(ii) The alien may be accompanied during the interview by a person of his or her choice, subject to the institution's and the panel's discretion, who is able to attend at the time of the scheduled interview. Such assistance shall be at no expense to the Government. The alien may submit to the Review Panel any information, in English, that he or she believes presents a basis for his or her release.

(4) *Alien's participation.* Every alien shall respond to questions or provide other information when requested to do so by Service officials for the purpose of carrying out the provisions of this rule.

(5) *Panel recommendation.* Following completion of the interview and its deliberations, the Review Panel shall issue a written recommendation that the alien be released or remain in custody pending removal or further review. This written recommendation shall include a brief statement of the factors that the Review Panel deems material to its recommendation.

(6) *Determination.* The Executive Associate Commissioner shall consider the recommendation and appropriate file material and issue a custody determination, in the exercise of discretion under the standards of this section. The Executive Associate Commissioner's review will include but is not limited to consideration of the factors described in paragraph (f) of this section. Before making any decision to release a detainee, the Executive Associate Commissioner must be able to reach the conclusions set forth in paragraph (e) of this section. The Executive Associate Commissioner is not bound by the panel's recommendation.

(j) *Conditions of release*—(1) *In general.* The district director or Executive Associate Commissioner may in his or her discretion impose such conditions or special conditions on release as the Service considers appropriate in an individual case or cases, including but not limited to the conditions of release noted in § 212.5(c) of this chapter and § 241.5. An alien released under this section must abide by the release conditions specified by the Service in relation to his or her release or sponsorship.

(2) *Sponsorship.* The district director or Executive Associate Commissioner may, in the exercise of discretion, condition release on placement with a close relative who agrees to act as a sponsor, such as a parent, spouse, child, or sibling who is a lawful permanent resident or a citizen of the United States, or may condition release on the alien's placement or participation in an approved halfway house, mental health project, or community project when, in the opinion of the Service, such condition is warranted. No detainee may be released until sponsorship, housing, or other placement has been found for the detainee, if ordered, including but not limited to evidence of financial support.

(3) *Employment authorization.* The district director and Executive Associate Commissioner may in their discretion grant employment authorization under the same conditions set forth in § 241.5(c) for aliens released under an order of supervision.

(4) *Withdrawal of release approval.* The district director or Executive Associate Commissioner may, in their discretion, withdraw approval for release of any detained alien prior to release when, in the decision maker's opinion, the conduct of the detainee, or any other circumstance, indicates that release would no longer be appropriate.

(k) *Timing of reviews.* The timing of reviews shall be in accordance with the following guidelines:

(1) *District director.* (i) Prior to the expiration of the 90-day removal period, the district director shall conduct a custody review for an alien described in paragraphs (a) and (b)(1) of this section where the alien's removal, while proper, cannot be accomplished because no country will accept the alien, or removal of the alien prior to expiration of the removal period is impracticable or contrary to the public interest. As provided in paragraph (h)(4) of this section, the district director will notify the alien in writing that he or she is to be released from custody, or that he or she will be continued in detention pending repatriation or further review of his or her custody status.

(ii) When release is denied pending the alien's repatriation, the district director in his or her discretion may retain responsibility for custody determinations for up to 3 months after expiration of the 90-day removal period, during which time the district director may conduct such additional review of the case as he or she deems appropriate. The district director may release the alien if he or she is not removed within the 3-month period following the expiration of the 90-day removal period, in accordance with paragraphs (e), (f), and (j) of this section, or the district director may refer the alien to the HQPDU for further custody review.

(2) *HQPDU reviews*—(i) *District director referral for further review.* When the district director refers a case to the HQPDU for further review, as provided in paragraph (c)(2) of this section, authority over the custody determination transfers to the Executive Associate Commissioner, according to procedures established by the HQPDU. The Service will provide the alien with approximately 30 days notice of this

further review, which will ordinarily be conducted by the expiration of the removal period or as soon thereafter as practicable.

(ii) *District director retains jurisdiction.* When the district director has advised the alien at the 90-day review as provided in paragraph (h)(4) of this section that he or she will remain in custody pending repatriation, and the alien is not removed within 3 months of the district director's decision, authority over the custody determination transfers from the district director to the Executive Associate Commissioner. The initial HQPDU review will ordinarily be conducted at the expiration of the 3-month period after the 90-day review or as soon thereafter as practicable. The Service will provide the alien with approximately 30 days notice of that review.

(iii) *Continued detention cases.* A subsequent review shall ordinarily be commenced for any detainee within approximately one year of a refusal by the Executive Associate Commissioner to grant release. Not more than once every three months in the interim between annual reviews, the alien may submit a written request to the HQPDU for release consideration based on a proper showing of a material change in circumstances since the last annual review. The HQPDU shall respond to the alien's request in writing within approximately 90 days.

(iv) *Review scheduling.* Reviews will be conducted within the time periods specified in paragraphs (k)(1)(i), (k)(2)(i), (k)(2)(ii), and (k)(2)(iii) of this section or as soon as possible thereafter, allowing for any unforeseen circumstances or emergent situation.

(v) *Discretionary reviews.* The HQPDU Director, in his or her discretion, may schedule a review of a detainee at shorter intervals when he or she deems such review to be warranted.

(3) *Postponement of review.* In the case of an alien who is in the custody of the Service, the district director or the HQPDU Director may, in his or her discretion, suspend or postpone the custody review process if such detainee's prompt deportation is practicable and proper, or for other good cause. The decision and reasons for the delay shall be documented in the alien's file. Reasonable care will be exercised to assure that the alien's case is reviewed once the reason for delay is remedied or if the alien is not removed from the United States as anticipated at the time review was suspended or postponed.

(4) *Transition provisions.* (i) The provisions of this section apply to cases that have already received the 90-day review. If the alien's last review under the procedures set out in the Executive Associate Commissioner memoranda entitled *Detention Procedures for Aliens Whose Immediate Repatriation is Not Possible or Practicable,* February 3, 1999; *Supplemental Detention Procedures,* April 30, 1999; *Interim Changes and Instructions for Conduct of Post-order Custody Reviews,* August 6, 1999, was a file review and the alien remains in custody, the HQPDU will conduct a custody review within 6 months of that review. If the alien's last review included an interview, the HQPDU review will be scheduled one year from the last review. These reviews will be conducted pursuant to the procedures in paragraph (i) of this section, within the time periods specified in this paragraph or as soon as possible thereafter, allowing for resource limitations, unforeseen circumstances, or an emergent situation.

(ii) Any case pending before the Board on the effective date (after this rule is published as a final rule) will be completed by the Board. If the Board affirms the district director's decision to continue the alien in detention, the next scheduled custody review will be conducted one year after the Board's decision in accordance with the procedures in paragraph (i) of this section.

(l) *Revocation of release*—(1) *Violation of conditions of release.* Any alien described in paragraphs (a) or (b)(1) of this section who has been released under an order of supervision or other conditions of release who violates the conditions of release may be returned to custody. Any such alien who violates the conditions of an order of supervision is subject to the penalties described in section 243(b) of the Act. Upon revocation, the alien will be notified of the reasons for revocation of his or her release or parole.

(2) *Determination by the Service.* The Executive Associate Commissioner shall have authority, in the exercise of discretion, to revoke release and return to Service custody an alien previously approved for release under the procedures in this section. A district director may also revoke release of an alien when, in the district director's opinion, revocation is in the public interest and circumstances do not reasonably permit referral of the case to the Executive Associate Commissioner. Release may be revoked in the exercise of discretion when, in the opinion of the revoking official:

(i) The purposes of release have been served;

(ii) The alien violates any condition of release;

(iii) It is appropriate to enforce a removal order or to commence removal proceedings against an alien; or

(iv) The conduct of the detainee, or any other circumstance, indicates that release would no longer be appropriate.

(3) *Timing of review when release is revoked.* The HQPDU Director shall schedule the review process in the case of an alien whose previous release or parole from immigration custody pursuant to a decision of either the district director or the Executive Associate Commissioner under the procedures in this section has been or is subject to being revoked. The normal review process will commence with notification to the alien of a file review and scheduling of an interview, which will ordinarily be expected to occur within approximately 3 months after release is revoked. Thereafter, custody reviews will be conducted annually under the provisions of paragraphs (i), (j), and (k) of this section.

9. Section 241.5 is amended by revising paragraph (a) introductory text to read as follows:

§ 241.5 Conditions of release after removal period.

(a) *Order of supervision.* An alien released pursuant to § 241.4 shall be released pursuant to an order of supervision. The Commissioner, Deputy Commissioner, Executive Associate Commissioner Field Operations, regional director, district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer-in-charge may issue Form I–220B, Order of Supervision. The order shall specify conditions of supervision including, but not limited to, the following:

* * * * *

10. Section 241.6 is revised to read as follows:

§ 241.6 Administrative stay of removal.

(a) Any request of an alien under a final order of deportation or removal for a stay of deportation or removal shall be filed on Form I–246, Stay of Removal, with the district director having jurisdiction over the place where the alien is at the time of filing. The Commissioner, Deputy Commissioner, Executive Associate Commissioner Field Operations, regional director, or district director, in his or her discretion and in consideration of factors such as are listed in § 212.5 of this chapter and section 241(c) of the Act, may grant a stay of removal or deportation for such time and under such conditions as he or she may deem appropriate. Neither the request nor the failure to receive notice

of disposition of the request shall delay removal or relieve the alien from strict compliance with any outstanding notice to surrender for deportation or removal.

(b) Denial by the Commissioner, Deputy Commissioner, Executive Associate Commissioner Field Operations, regional director, or district director of a request for a stay is not appealable, but such denial shall not preclude an immigration judge or the Board from granting a stay in connection with a motion to reopen or a motion to reconsider as provided in 8 CFR part 3.

(c) The Service shall take all reasonable steps to comply with a stay granted by an immigration judge or the Board. However, such a stay shall cease to have effect if granted (or communicated) after the alien has been placed aboard an aircraft or other conveyance for removal and the normal boarding has been completed.

Dated: June 23, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–16560 Filed 6–29–00; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317, 318, 319, 381

[Docket No. 97–036R]

Other Consumer Protection (OCP) Activities—Reopening of Comment Period

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is reopening the comment period for the advanced notice of proposed rulemaking ''Other Consumer Protection (OCP) Activities'' for 60 days. This action responds to a request to allow additional time for comments.

DATES: Comments must be received on or before August 29, 2000.

ADDRESSES: Submit one original and two copies of written comments to: FSIS Docket Clerk, Docket # 97–036R, Room 102, Cotton Annex Building, 300 12th Street, SW, Washington, DC 20250–3700. All comments received in response to this notice will be considered part of the public record and will be available for viewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday. FSIS has made a technical paper available in the FSIS Docket Room and on the FSIS homepage (www.fsis.usda.gov).

FOR FURTHER INFORMATION CONTACT: Daniel Engeljohn, Director, Regulations Development and Analysis Division, Food Safety and Inspection Service, Washington, DC 20250–3700, at (202) 720–5627, fax number (202) 690–0486.

SUPPLEMENTARY INFORMATION: On March 17, 2000, FSIS published the advanced notice of proposed rulemaking (ANPR) ''Other Consumer Protection (OCP) Activities'' (65 FR 14486). FSIS published this ANPR to request comments on the need and desirability of revising its approach to verifying that meat and poultry products are not misbranded, economically adulterated, or otherwise unacceptable for reasons that do not necessarily raise food safety or public health concerns. In the ANPR, FSIS referred to these program activities as ''other consumer protection'' (OCP) activities. The ANPR defined and described FSIS' OCP activities and discussed the Agency's need for revised regulations and verification and enforcement procedures.

FSIS has received a request to extend the comment period for an additional 180 days because of the large scope of the ANPR. FSIS agrees that the ANPR addresses many issues and wants to receive as much input as possible. However, because this is an ANPR, and any further actions by the Agency will be issued in a notice and comment proposed rulemaking, FSIS is reopening the comment period for 60 days. After the comment period closes, FSIS, intends to proceed with development of various OCP notice and comment proposed rulemakings.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience.

For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on: June 22, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–16520 Filed 6–29–00; 8:45 am]

BILLING CODE 3410–DM–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 31, 32, 33, 34, 35, 36, 39, 40, 50, 61, 70, 72, and 76

[Docket No. PRM–30–63]

Natural Resources Defense Council; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Natural Resources Defense Council (NRDC). The petition has been docketed by the Commission and has been assigned Docket No. PRM–30–63. The petitioner requests that the NRC amend its regulations to require that an individual report illegal payments to regulators if the individual has knowledge or evidence of the illegal payments. The petitioner requests that an individual who fails to make such a report not be issued a license or allowed to retain a license.

DATES: Submit comments by September 13, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

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

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

For a copy of the petition, write to David L. Meyer, Chief, Rules and

Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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

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

SUPPLEMENTARY INFORMATION:

Background

On May 3, 2000, the NRC docketed an April 20, 2000, letter from Thomas B. Cochran, Ph.D., Director, Nuclear Program, Wade Green Chair for Nuclear Policy, NRDC, to the Honorable Richard A. Meserve, Chairman, U.S. Nuclear Regulatory Commission, as a petition for rulemaking under 10 CFR 2.802. In this letter, Dr. Cochran requested that the NRC issue regulations under the provisions of 10 CFR 2.206 that would require an individual to report illegal payments to regulators if the individual has knowledge or evidence of the illegal payments. The petitioner requests that an individual who fails to make such a report not be issued a license or allowed to retain a license. The § 2.206 process is applicable to actions that would suspend, modify, or revoke a license. Requests to add, amend, or remove a regulation are processed under 10 CFR 2.802. Therefore, Dr. Cochran's request was docketed under the procedures applicable to petitions for rulemaking contained in § 2.802.

The Petition

The petitioner references a letter from the NRC to an individual indicating that the NRC will take no further action on its Demand for Information dated July 12, 1999 (EA 99–180). The Demand for Information sought information that would allow the NRC to determine whether it needed to take any action concerning the individual or the licensee for which the individual was president. The matter in question concerned payments made by the individual to an official of an Agreement State regulatory body that was responsible for issuing licensees and overseeing activities related to the individual's license.

The petitioner characterizes this letter as indicating the Commission's apparent satisfaction with mere assurances from the individual that the individual will act with the candor and integrity that is required of NRC licensees despite what the petitioner states are the individual's unlawful actions and failure to notify Federal or State officials of the potentially criminal activities of a regulator.

The petitioner states that the NRC's action does little to quell his concerns about safeguarding the nuclear regulatory process to prevent a recurrence of this type of action. The petitioner asserts that the only reasonable response to the admitted participation of the individual in a blatantly corrupt scheme with a top nuclear official in an Agreement State would have been to bar the individual from any further involvement in NRC-licensed activities for life. The petitioner also states that the least the NRC could have done following what the petitioner characterized as a protracted process would be to provide a fully reasoned justification for its decision to allow the individual to return to his position in running a licensed company.

The Requested Action

The petitioner is concerned that the reinstatement of the individual establishes an extremely dangerous precedent from a regulatory perspective. Therefore, the petitioner requests that the NRC promulgate the following as an NRC regulation:

> No licensee (sic) shall be issued to, or retained by, any person who, or any organization whose principal owner, officer, or senior manager, has engaged in, or has knowledge or evidence pertaining to, but fails to promptly report that knowledge or evidence to the NRC, bribery of, or extortion by, any Federal, State or other regulatory official involved in the review or approval of, or continuing oversight over, the license activities, or license applications; or any person who, or any organization whose principal owner, officer, or senior manager, has acted in any manner that flagrantly undermines the integrity of the regulatory process of the NRC or that of an Agreement State.

Dated at Rockville, Maryland, this 23rd day of June, 2000.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 00–16649 Filed 6–29–00; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–202–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 SHERPA Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Short Brothers Model SD3–60 SHERPA series airplanes, that currently requires a one-time visual inspection to determine the part number of the power control cable assemblies and pulleys of the engine controls; and replacement of the power control cable assemblies and pulleys (as applicable) with new parts, if necessary. This action would require accomplishment of the inspection and replacement in accordance with revised procedures. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent breakage of the power control cable assemblies due to the inflexible construction of the cable, which could result in loss of engine power and consequent reduced controllability of the airplane.

DATES: Comments must be received by July 31, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–202–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via the Internet must contain ''Docket No. 2000–NM–202-AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241,

Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT:

Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–202–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–202–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 28, 1999, the FAA issued AD 99–03–06, amendment 39–11020 (64 FR 5588, February 4, 1999), applicable to all Short Brothers Model SD3–60 SHERPA series airplanes, to require a one-time visual inspection to determine the part number of the power control cable assemblies and pulleys of the engine controls; and replacement of the power control cable assemblies and pulleys (as applicable) with new parts, if necessary. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent breakage of the power control cable assemblies due to the inflexible construction of the cable, which could result in loss of engine power and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the manufacturer has determined that certain pulleys were inadvertently omitted from the service bulletin referenced for accomplishing the required inspection and replacement of the pulleys. Accordingly, the manufacturer has issued a revision to the service bulletin to provide corrected procedures for accomplishment of the inspection and replacement.

Explanation of Relevant Service Information

The manufacturer has issued Shorts Service Bulletin SD3–60 SHERPA–76–1, Revision 2, dated March 21, 2000. This service bulletin contains procedures similar to those in the original issue of the service bulletin, dated July, 1998, and Revision 1, dated October 14, 1998, which were referenced as the appropriate sources of service information in AD 99–03–06. However, Revision 2 adds procedures for inspecting and replacing two additional pulleys, clarifies certain other procedures for accomplishment of the actions, and clarifies the recommended compliance time. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, classified this service bulletin as mandatory in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 99–03–06 to require a one-time inspection to determine the part number of the power control cable assemblies and pulleys of the engine controls; and replacement of the power control cable assemblies and pulleys (as applicable) with new parts, if necessary. The actions would be required to be accomplished in accordance with the revised service bulletin described previously.

Cost Impact

The FAA estimates that approximately 28 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 15 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $25,200, or $900 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of

power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11020 (64 FR 5588, February 4, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Short Brothers, Plc: Docket 2000–NM–202–AD. Supersedes AD 99–03–06, Amendment 39–11020.

Applicability: All Model SD3–60 SHERPA series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent breakage of the power control cable assemblies due to the inflexible construction of the cable, which could result in loss of engine power and consequent reduced controllability of the airplane, accomplish the following:

Inspection and Corrective Actions

(a) At the next scheduled heavy maintenance inspection, but no later than 1,200 flight hours after the effective date of this AD: Perform a one-time inspection to determine the part number (P/N) of the power control cable assemblies and pulleys of the engine controls, in accordance with Part A of the Accomplishment Instructions of Shorts Service Bulletin SD3–60 SHERPA–76–1, Revision 2, dated March 21, 2000.

(1) If any power control cable assembly having P/N SD3–47–1091 or SD3–47–1094 is found, prior to further flight, replace the power control cable assembly with a new power control cable assembly in accordance with Part B of the Accomplishment Instructions of the service bulletin.

(2) If any pulley having P/N C181605 is found, prior to further flight, replace the pulley with a new pulley in accordance with Part C of the Accomplishment Instructions of the service bulletin.

Spares

(b) As of the effective date of this AD, no person shall install on the engine controls of any airplane a cable assembly having P/N SD3–47–1091 or SD3–47–1094, or any pulley having P/N C181605.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, International Branch, ANM–116.

Special Flight Permits

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

Issued in Renton, Washington, on June 26, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–16646 Filed 6–29–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–10–AD]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model Astra SPX and 1125 Westwind Astra Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive

(AD) that is applicable to certain Israel Aircraft Industries, Ltd., Model Astra SPX and 1125 Westwind Astra series airplanes. This proposal would require a one-time inspection of the position of the aileron autopilot servo and attachment arm; follow-on actions; and corrective actions, if necessary; and installation of a stopper angle on the servo bracket. This action is necessary to prevent the control link of the aileron autopilot servo from being driven overcenter, which could result in roll oscillations when the autopilot is engaged. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 31, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–10–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via the Internet must contain ''Docket No. 2000-NM–10–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–10–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–10–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, notified the FAA that an unsafe condition may exist on certain Israel Aircraft Industries, Ltd., Model Astra SPX and 1125 Westwind Astra series airplanes. The CAAI advises that a too-short attachment arm on an aileron autopilot servo actuator can allow the servo control link to be driven overcenter. This condition, if not corrected, could result in roll oscillations when the autopilot is engaged.

Explanation of Relevant Service Information

The manufacturer has issued Astra (Israel Aircraft Industries) Alert Service Bulletin 1125–27A–157, dated September 14, 1999. The service bulletin describes procedures for a one-time inspection of the aileron autopilot servo and attaching linkage to determine whether the attachment arm on the autopilot servo is in the correct position. For any attachment arm that is not in the correct position, the service bulletin describes procedures for a one-time inspection to detect damage (including gouges and scratches) of the bellcrank arm, control link, and servo attachment arm; follow-on actions; and corrective actions, if necessary. The follow-on and corrective actions include repositioning the servo attachment arm to the correct position, and repairing or replacing damaged parts with new parts depending on the extent of damage found. The service bulletin also describes procedures for installing a stopper angle on the servo bracket.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAAI classified this service bulletin as mandatory and issued Israeli airworthiness directive 27–99–10–06R1, dated November 17, 1999, in order to assure the continued airworthiness of these airplanes in Israel.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 38 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $100 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $8,360, or $220 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Israel Aircraft Industries, Ltd.: Docket 2000–NM–10–AD

Applicability: Model Astra SPX and 1125 Westwind Astra series airplanes; certificated in any category; serial numbers 030, and 042 through 086 inclusive.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the control link of the aileron autopilot servo from being driven overcenter, which could result in roll oscillations when the autopilot is engaged, accomplish the following:

Inspection and Corrective Actions

(a) Within 50 flight hours after the effective date of this AD, perform a one-time general visual inspection of the aileron autopilot servo and attaching linkage to determine whether the attachment arm on the servo is in the correct position, in accordance with Astra (Israel Aircraft Industries) Alert Service Bulletin 1125–27A–157, dated September 14, 1999.

(1) If the attachment arm is in the correct position, prior to further flight, install a stopper angle on the servo bracket in accordance with the alert service bulletin.

(2) If the attachment arm is in the incorrect position, prior to further flight, perform a general visual inspection to detect damage of the bellcrank arm, control link, and attachment arm, in accordance with the alert service bulletin. Prior to further flight after accomplishment of all applicable corrective actions specified by this paragraph, install a stopper angle on the servo bracket in accordance with the alert service bulletin.

(i) If no damage is detected, prior to further flight, reposition the attachment arm in accordance with the alert service bulletin.

(ii) If any damage is detected and the damage is within the limits specified by the alert service bulletin, prior to further flight, repair the damaged part in accordance with the alert service bulletin.

(iii) If any damage is detected and the damage exceeds the limits specified by the alert service bulletin, prior to further flight, replace the damaged part with a new part in accordance with the alert service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 4: The subject of this AD is addressed in Israeli airworthiness directive 27–99–10–06R1, dated November 17, 1999.

Issued in Renton, Washington, on June 26, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–16645 Filed 6–29–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–364–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Dornier Model 328–300 series airplanes. This proposal would require revising the Airplane Flight Manual. This action is necessary to prevent an undetected dragging parking brake, and consequent decreased acceleration during the takeoff roll, increased takeoff distance, and possible runway overrun. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 31, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–364–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via the Internet must contain ''Docket No. 99–NM–364–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–

82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 99–NM–364–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–364–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on all Dornier Model 328–300 series airplanes. The LBA advises that, after using the parking brake during a taxiing test, the pilot noticed that the brake did not release completely. It was determined that the parking brake may have been used as a brake pressure metering device while the airplane was moving. Such improper use of the parking brake could lead to a dragging brake, which would not be detected by the takeoff configuration warning in the airplane. An undetected dragging parking brake, if not corrected, could result in decreased acceleration during the takeoff roll, increased takeoff distance, and possible runway overrun.

Explanation of Relevant Service Information

Dornier has issued All Operators Telefax AOT–328J–32–001, dated September 9, 1999, which advises of a revision to the Airplane Flight Manual (AFM) to prohibit use of the parking brake for braking, except in emergency situations. The LBA classified the AOT as mandatory and issued German airworthiness directive 1999–352, dated November 18, 1999, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require revising the AFM to prohibit use of the parking brake for braking, except in emergency situations.

Difference Between Proposed AD and the German Airworthiness Directive

Operators should note that, although the LBA has mandated that the AFM be revised prior to the next flight, the FAA has determined that an interval of 10 days would address the identified unsafe condition in a timely manner while allowing operators sufficient time to implement the AFM revision proposed by this AD.

Cost Impact

The FAA estimates that 7 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $420, or $60 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation

Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dornier Luftfahrt GMBH: Docket 99–NM–364–AD.

Applicability: All Model 328–300 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent an undetected dragging parking brake, and consequent decreased acceleration during the takeoff roll, increased takeoff distance, and possible runway overrun, accomplish the following:

AFM Revision

(a) Within 10 days after the effective date of this AD: Revise the Limitations Section of the FAA-approved Airplane Flight Manual by inserting a copy of Dornier 328J All Operators Telefax AOT–328J–32–001, dated September 9, 1999.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 2: The subject of this AD is addressed in German airworthiness directive 1999–352, dated November 18, 1999.

Issued in Renton, Washington, on June 26, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–16644 Filed 6–29–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–21–AD]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG V2500–A5/D5 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain International Aero Engines (IAE) V2500–A5/D5 series turbofan engines, identified by serial number. This proposal would require the removal of engines assembled with an improper High Pressure Turbine (HPT) module configuration from service prior to accumulating 5,100 or 7,600 cycles in the improper configuration, or at the next shop visit, depending on the type of improper HPT configuration, and restoration to type design. This proposed amendment is prompted by reports of engines that do not conform to the engine type design, which could cause a Low Cycle Fatigue (LCF) life reduction of the HPT stage 1 disk. The actions specified by the proposed AD are intended to restore engines to type design configuration and to prevent possible LCF failure of the HPT stage 1 disk, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by July 31, 2000.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–21–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be submitted to the Rules Docket by using the following Internet address: ''9-ane-adcomment@faa.gov''. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The service information referenced in this AD may be obtained from International Aero Engines, 400 Main Street, East Hartford, CT 06108; telephone (860) 565–5515; fax (860) 565–5510. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7133, fax 781–238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NE–21–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–21–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received reports that during recent shop visits at various overhaul and repair facilities, 32 V2500–A5/D5 series engines have been assembled with improper HPT module configurations. The improper HPT assemblies resulted from incorrect or incomplete incorporation of several IAE service bulletins (SB) required for proper assembly of the high secondary cooling airflow HPT stage 1 turbine blades and cooling duct, which were

introduced as part of the V2533–A5 HPT configuration. The new high secondary cooling airflow HPT stage 1 blade and modified stage 1 HPT cooling duct assembly were introduced to improve the blade cooling and blade durability. This configuration became the new standard for all V2500-A5 and D5 series engines. Service Bulletins V2500–ENG–72–0242 and SB V2500–ENG–72–0241 introduced the ''high airflow'' HPT blades and stage 1 HPT cooling duct assembly, respectively, to the other V2500–A5/D5 models. For engines with thrust ratings below 33K, the HPT module can be assembled with either the low airflow stage 1 HPT blades and low airflow or high airflow stage 1 HPT cooling duct assembly (pre SB V2500–ENG–72–0242 and pre or post SB V2500–ENG–72–0241, respectively) or with the high airflow stage 1 HPT blades and high airflow cooling duct assembly (post SB V2500–ENG–72–0242 and post SB V2500–ENG–72–0241, respectively). The FAA has reports of 32 engines that have been assembled with an intermix of high airflow and low airflow HPT hardware. There are five improper configurations of the HPT module in the field as defined below.

Configuration	Stage 1 HPT blade	Stage 1 HPT cooling duct assembly	Towel bar seals part no. 2A0530	Number Affected engines
X	Full set of High Flow	Low Flow	Installed	19
X*	3 or fewer High Flow	Low Flow	Installed	2
X′	2 High Flow	Low Flow	Not Installed	1
Y	Full set of High Flow	High Flow	Installed	9
Z	Full set of Low Flow	High Flow	Installed	1
Baseline: After installation of Service Bulletins (SB) 72–0242 and SB 72–0241.	Full set of High Flow	High Flow	Not Installed.	

Configuration X and X′ result in higher temperature in the OD rim cavity of the HPT stage 1 disk than the design intended. The consequence of this disk rim temperature increase is a debit to the life of the disk. An engineering review has determined that if engines in configuration X are removed from service and restored to an approved configuration prior to accumulating 5,100 cycles in configuration X, the HPT disk assembled in an approved configuration will meet its chapter 5 life limit. The disk rim temperature increase for configuration X′ engine is less severe than for the configuration X. An engineering review has determined that if the engine in configuration X′ is removed from service and restored to an approved configuration prior to accumulating 7,600 cycles in configuration X′, the HPT disk assembled in an approved configuration will meet its chapter 5 life limit.

Configurations X*, Y, and Z do not effect the HPT disk rim temperatures significantly. However, these are not approved configurations. This proposed AD will require the removal of engines with HPT modules built to configuration X*, Y, or Z from service and the restoration to type design at the next shop visit.

The actions specified by the proposed AD are intended to restore the engine to type design and prevent possible LCF failure of the stage 1 HPT disk, which, if not corrected, could lead to an uncontained engine failure and damage to the airplane.

Service Information

IAE has issued All Operators Wire (AOW) No. 1053, Issue 2, dated June 20, 2000, which identifies engines with HPT modules utilizing non type design configurations by serial numbers and by specific configurations. (configuration X, X*, X′, Y, or Z).

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, the proposed AD would require the removal from service of certain V2500–A5/D5 series engines, identified by serial numbers, prior to accumulating 5,100 or 7,600 cycles in the improper configuration, or at the next shop visit, depending on the type of improper HPT module configuration and the restoration type design.

Economic Analysis

There are approximately 32 engines in the worldwide fleet with the HPT module assembled in an improper configuration. The FAA estimates that 12 engines installed on aircraft of US registry would be removed from service before scheduled shop visits as a result of this proposed AD. The cost of early removal and restoration to type design will be approximately $6,000 per engine. Based on these figures, the total cost impact of the proposed AD on US operators is estimated to be $72,000.

Regulatory Impact

This proposal does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

International Aero Engines: Docket No. 2000–NE–21–AD.

Applicability: International Aero Engines (IAE) V2500–A5 and V2500–D5 series turbofan engines listed by Serial Number (S/N) as follows: V10011, V10035, V10036, V10039, V10040, V10041, V10054, V10067, V10079, V10080, V10084, V10111, V10121, V10123, V10124, V10130, V10131, V10139, V10166, V10172, V10174, V10180, V10199, V10221, V10341, V20001, V20013, V20017, V20019, V20023, V20033, V20037.

These engines are installed on, but not limited to, Airbus Industries A319, A320, A321 series, and McDonnell Douglas MD–90 series airplanes.

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

Compliance: Required as indicated, unless accomplished previously.

To restore the engines to type design and to prevent possible low cycle fatigue (LCF) failure of the HPT stage 1 disk, which could lead to an uncontained engine failure and damage to the airplane, accomplish the following:

Removal and Restoration of the HPT Module

(a) For those engines identified by serial numbers in Table 1 of this AD, with HPT modules built to configuration X, X′, X*, Y, or Z, remove from service in accordance with Table 1 and restore the HPT module to type design in accordance with IAE All Operators Wire (AOW) 1053, Issue 2, dated 6/20/00.

TABLE 1

Engine serial No.	HPT module configuration	HPT hardware	Reconfigure at or prior to:
V10084, V10035, V10036, V10039, V10130, V10011, V10040, V10079, V10080, V10124, V10123, V10111, V20013, V20017, V10172, V10174, V20019, V10180, V20023.	X	High Flow Blades: Post SB72–0242; Low Flow Duct Assembly: Pre SB72–0241; Towel Bar Seals, P/N 2A0530: Installed.	The earlier of the next shop visit; or accumulating either 5100 cycles in service (CIS) in configuration X, or 100 CIS after the effective date of this AD, whichever occurs later.
V20037	X′	2 High Flow Blades: Post SB72–0242; Low Flow Duct or Assembly: Pre SB72–0241; Towel Bar Seals, P/N 2A0530: Not Installed.	The earlier of the next shop visit; or accumulating either 7600 CIS in configuration X′, or 100 CIS after the effective date of this AD, whichever occurs later.
V20001, V20033	X*	3 or fewer High Flow Blades: Post SB72–0242; Low Flow Duct Assembly: Pre SB72–0241; Towel Bar Seals, P/N 2A0530: Installed.	Next Shop Visit.
V10199, V10166, V10054, V10131, V10139, V10041, V10121, V10067, V10341.	Y	High Flow Blades: Post SB 72–0242; High Flow Duct Assembly: Post SB72–0241; Towel Bar Seals, P/N 2A0530: Installed.	Next Shop Visit.
V10221	Z	Low Flow Blades: Pre SB72–0242; High Flow Duct Assembly: Post SB72–0241; Towel Bar Seals, P/N 2A0530: Installed.	Next Shop Visit.

Alternate Methods of Compliance

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

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

Ferry Flights

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

Issued in Burlington, Massachusetts, on June 23, 2000.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–16643 Filed 6–29–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 57, 72, and 75

RIN 1219–AA74 and 1219–AB11

Diesel Particulate Matter Exposure of Underground Miners

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; availability of documents; request for comments.

SUMMARY: We (MSHA) are reopening the rulemaking records of our proposed rules on diesel particulate matter exposure of underground coal miners and underground metal and nonmetal miners. The reopenings are limited in scope. Their purpose is to permit public comment on a few recent documents that we have added to these records, including some agency investigations to verify assertions made by commenters.

DATES: We must receive your comments by July 31, 2000.

ADDRESSES: Send your comments by regular mail or hand deliver them to MSHA, Office of Standards, Regulations, and Variances, 4015 Wilson Boulevard, Room 631, Arlington, VA 22203–1984. You also may send them by telefax (fax) to MSHA, Office of Standards, Regulations, and Variances, 703–235–5551; or by electronic mail (e-mail) to *comments@msha.gov.* If you send your

comments by fax or e-mail, you must clearly identify them as such. We encourage you to supplement paper comments with computer files on disk; contact us with any questions about format.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Director; MSHA Office of Standards, Regulations, and Variances; 703–235–1910.

SUPPLEMENTARY INFORMATION: We have developed extensive records concerning whether to issue regulations limiting the concentration of diesel particulate matter (dpm) in underground coal mines and underground metal and nonmetal mines, and what type of rule would be appropriate for each sector. We have been working on this initiative for a number of years. We issued a proposed rule for underground coal mines on April 9, 1998, and a proposed rule for underground metal and nonmetal mines on October 29, 1998. Following a period for pre-hearing comments on each proposal, we held four public hearings around the country on each proposal. After an extension of the comment period for each proposal, both records closed on July 26, 1999.

We have now determined that it is appropriate to add some documents to each of these records. You are welcome to comment on the additions to both records.

A. Items Being Added to the Metal and Nonmetal Record.

A key feature of the proposed rule for this sector was the establishment of a concentration limit for dpm. Accordingly, in reviewing the record, the agency paid particular attention to assertions by the mining community that the sampling and analytical method which MSHA proposed to use for measuring compliance with that limit would not provide accurate results in many cases. Specifically, we proposed:

Section 57.5061 Compliance determinations.

(a) * * *

(b) The Secretary will collect and analyze samples of diesel particulate matter using the method described in NIOSH Analytical Method 5040 and determining the amount of total carbon * * *

In the preamble to the proposed rule (63 FR 58104 *et seq.*), in particular a discussion entitled ''(3) Methods Available to Measure DPM'' (63 FR 58127–58130); in Question and Answer #12 (63 FR 58116–58117); and in the discussion of proposed § 57.5061 (63 FR 58184), we reviewed the various approaches used to determine the concentration of dpm, and explained our rationale for the approach proposed. Moreover, we asserted that the method we proposed to use could accurately determine whether dpm emissions in any underground metal or nonmetal mine exceeded the proposed concentration limit (with an appropriate allowance for a margin of error).

There was extensive comment on this assertion during the four rulemaking hearings and in written pre-hearing and post-hearing comments. While some commenters reaffirmed the validity of various aspects of the method, a number of commenters asserted that we could not rely on this approach for compliance purposes in certain types of mines and under various circumstances.

Specifically, these commenters asserted that some of the material being measured as dpm might well be something other than dpm, an ''interferrent.'' Some asserted that certain types of mineral dust, in particular graphite and carbonaceous minerals, were interferrents. Other commenters asserted that oil mists from drilling operations and cigarette smoking by miners, which can be present in many underground metal and nonmetal mines, were interferrents. Some commenters supported their claims with study results.

During the hearings, MSHA representatives expressed concerns about the manner in which these studies had been performed and the methodology used. When we examined the information provided for the record about these studies, our concerns were heightened, thus leaving us without enough evidence to verify the existence and scope of the alleged interferences.

We decided that we would attempt to verify the existence and scope of the alleged interferrents while we were reviewing other aspects of the rulemaking record. Other agencies have followed this approach. The situation discussed in *Community Nutrition Institute* v. *Block*, 749 F.2d 50 (D.C. Cir. 1984), Circuit Judges Wilkey, Bork, and Scalia, is an example. The case involved studies that Department of Agriculture staff conducted in response to comments alleging deficiencies in a methodology, and completed after the close of the comment period.

Accordingly, MSHA's Pittsburgh Safety and Health Technology Center conducted five investigations to verify these assertions of methodological problems. We have decided to reopen the record to provide the mining community an opportunity to review and comment on this information. Members of the mining community also requested that we reopen the record for this purpose.

B. Items Being Added to the Coal Record

The rule proposed for this sector would have required certain types of underground coal mining equipment to be filtered. We also requested comment on an alternative which would have required certain types of underground equipment to observe an emissions standard. An emissions standard could be achieved using a lower emission engine or filters or both. In either case, the efficiency of available filters is one important consideration in determining the economic and technological feasibility of the rule for coal mines. Thus, during the hearings and in the written comments, there was a great deal of discussion on this topic, and we compiled an extensive record.

Some commenters asserted that paper filters could not achieve a 95% reduction in emissions from current permissible equipment, as we had asserted. Such filters can be directly installed on permissible equipment, without the need for additional equipment to cool the exhaust (so it will not ignite the filter element). While the record does contain considerable evidence on the efficiency of two versions of a system known as the DST® that first cools the exhaust from an engine and then routes it through a paper filter (and in one case a catalytic convertor), it contained no definitive information supporting the assertion of commenters that a paper filter alone could not achieve such efficiencies. Accordingly, in order to verify the assertions of commenters, we contracted with Southwest Research Institute to conduct an investigation toward this end. We are placing the Institute's report of test results in the record and welcome your comments on it.

The record does contain considerable information on the efficiency of hot gas filters (e.g., ceramic monolithic cell, metal sintered, fiber wound, etc.), which will play an important role in reducing emissions from non-permissible equipment under either regulatory scenario described above. This information includes filter efficiency tests conducted by VERT (Verminderung der Emissionen von Realmaschinen in Tunnelbau), a consortium of several European agencies conducting such research in connection with major planned tunneling projects in Austria, Switzerland, and Germany. Since the close of the record, these VERT tests have continued. We believe it is appropriate to consider the full range of their results and are adding their more

recent test data to the record. We welcome your comments on it.

C. Items Being Added to Both Records

Since the record closed, several documents have been published concerning the risk of dpm. This risk information is applicable to both coal's and metal and nonmetal's rulemakings.

The first item is a report by another Federal authority updating information discussed in the record. During the hearings and post-hearing comments, there was considerable discussion of an October 1998 report of the Clean Air Scientific Advisory Committee (CASAC) reviewing an EPA Diesel Health Assessment Document. This committee has issued a new report (''Review of EPA's Health Assessment Document for Diesel Emissions'' February 2000) on a revised EPA Diesel Health Assessment Document (EPA, Health Assessment Document for Diesel Emissions, Office of Research and Development, SAB Review Draft, EPA–600/8–90/057D, November 1999). Members of the mining community participated actively in the discussions leading to CASAC's newer report. Accordingly, we believe it would be appropriate to update our record to reflect any new information covered by the revised EPA assessment and the CASAC's review of it. Members of the mining community have requested that we reopen the record for this purpose.

The second item is a study by Saverin, R. *et al.*, ''Diesel Exhaust and Lung Cancer Mortality in Potash Mining,'' *American Journal of Industrial Medicine*, 36:415–422 (1999). The unpublished version of the study was discussed at one of the hearings, and we already have the unpublished version of this study in the record. The published version which differs slightly from the earlier translation is now available and it is normal practice to refer to the published version of a study when that version is available. Accordingly, we are adding the published version to the record and welcome your comments on it.

The third item is an epidemiological study investigating the association of lung cancer with occupational exposures to diesel emissions in Germany. Bruske-Hohlfeld, I. *et al.*, ''Lung Cancer Risk in Male Workers Occupationally Exposed to Diesel Motor Emissions in Germany,'' *American Journal of Industrial Medicine*, 36:405–414 (1999). The record of this rulemaking includes a lengthy and comprehensive list of relevant epidemiological studies. These were discussed in great detail by the mining community during the hearings and comment period. As a result, we believe it would be inappropriate to leave this recent epidemiological study out of the record. Accordingly, we are adding this study to the record and welcome your comments on it.

The fourth item is a study concerning human response to acute dpm exposures. Salvi, Sundeep, *et al.*, ''Acute Inflammatory Responses in the Airways and Peripheral Blood After Short-Term Exposure to Diesel Exhaust in Health Human Volunteers,'' *Am. J. Respir. Care Med.* 159:702–709 (1999). Again, the record of this rulemaking includes a comprehensive list of relevant studies in this regard, and they were discussed by the mining community during the hearings and comment period. Since the Agency is opening the record, the addition of this recent study is appropriate. Accordingly, this study is being added to the record at this time.

Finally, in its review of the record, the agency noted certain comments suggesting that these commenters might not have been aware of certain studies that were part of the general scientific literature covered by reviews which are included and discussed in the record. Accordingly, the agency is placing copies of two such studies directly into the record under their own docket numbers, and will accept any comments on these studies. [Hou, S.M. *et al.,* ''Relationship between hprt mutant frequency, aromatic DNA adducts and genotypes for GSTM1 and NAT2 in bus maintenance workers,'' *Carcinogenesis,* 16:1913–1917 (1995); and Ichinose, *et al.,* ''Lung Carcinogenesis and Formation of 8-hydroxy-deoxyguanosine in Mice by Diesel Exhaust Particles,'' *Carcinogenesis,* 18:185–192 (1997).]

The agency wants to reassure the mining community that since the agency's risk assessment covers information relevant to both underground coal mines and underground metal and nonmetal mines, any comments on the risk assessment filed in one record have also been placed in the other. In some cases, commenters placed the comments in both records just to be sure MSHA would consider them, but not all did so. The agency will follow this same policy with respect to any comments on the risk studies which are the subject of this notice.

D. Time for Response

The Agency is opening the rulemaking record for additional comment on only the specific items described above. The agency has determined that in light of the limited scope of this reopening, and the extensive familiarity of the mining community with the existing record on the topics involved, the record will remain open for comments on these items for 30 days. The agency does not foresee any extensions will be needed. Accordingly, to facilitate comment by the mining community, the agency will be pleased to telefax or express mail copies of any of the items involved upon request.

Dated: June 27, 2000.

Robert A. Elam,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 00–16561 Filed 6–28–00; 8:45 am]

BILLING CODE 4510–43–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 140, 141, 142, 143, 144, 145, 146, and 147

[USCG–1998–3868]

RIN 2115–AF39

Outer Continental Shelf Activities

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Coast Guard is further extending the period for public comment on its notice of proposed rulemaking (NPRM) on Outer Continental Shelf Activities. We are changing the deadline for receipt of comments from July 5, 2000, to November 30, 2000. Also, we are changing the deadline for receipt of comments by the Office of Management and Budget on the proposed collection-of-information requirements from July 5, 2000, to November 30, 2000.

DATES: Comments and related material must reach the Docket Management Facility on or before November 30, 2000. Comments sent to OMB on collection of information must reach OMB on or before November 30, 2000.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following methods:

(1) By mail to the Docket Management Facility, (USCG–1998–3868), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC,

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

You may also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, call Mr. James M. Magill, Vessel and Facility Operating Standards Division (G–MSO–2), telephone 202–267–1082 or fax 202–267–4570. For questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief of Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The notice of proposed rulemaking (NPRM) on Outer Continental Shelf Activities, published on December 7, 1999 (64 FR 68416), encouraged interested persons to participate in this rulemaking by submitting written data, views, or arguments by April 5, 2000. It also invited comments on collection-of-information requirements to be submitted to the Office of Management and Budget (OMB) by February 7, 2000. We received a request to extend both of those dates to July 5, 2000, and did so by a notice of extension (65 FR 14226, March 16, 2000). As a result of several requests since that notice of extension, we are again extending both dates until November 30, 2000.

Persons submitting comments should include their names and addresses, identify this docket (USCG–1998–3868) and the specific section of the NPRM to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this NPRM in view of them.

Dated: June 27, 2000.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 00–16658 Filed 6–29–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT–062–7221; A–1–FRL–6727–7]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Post-1996 Rate-of-Progress Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Connecticut. The revisions establish post-1996 rate-of-progress plans, including minor adjustments to the 1990 base year inventory, for the Greater Hartford serious ozone nonattainment area, and for the Connecticut portion of the New York, New Jersey, Connecticut (NY–NJ–CT) severe ozone nonattainment area. The intended effect of this action is to propose approval of these SIP revisions as meeting the requirements of the Clean Air Act.

DATES: Written comments must be received on or before July 31, 2000. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to David B. Conroy, Chief, Air Quality Planning Unit (mail code CAQ), U.S. Environmental Protection Agency, Region I, One Congress Street, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA, and at the Department of Environmental Protection, Bureau of Air Management, 79 Elm Street, Hartford, Connecticut.

FOR FURTHER INFORMATION CONTACT: Robert McConnell, (617) 918–1046.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

A. What action is EPA taking today?
B. Why was Connecticut required to reduce its emissions of ozone forming pollutants?
C. Which specific air pollutants are targeted by Connecticut's plans?
D. What are the sources of these pollutants?
E. What harmful effects can these pollutants produce?
F. Should I be concerned if I live near an industry that emits a significant amount of these pollutants?
G. To what degree do Connecticut's plans reduce emissions?
H. What changes were made to Connecticut's base year inventory?
I. How will Connecticut achieve these emission reductions?
J. Have these emission reductions improved air quality in Connecticut?
K. Connecticut is downwind of many large metropolitan areas. Do pollutants emitted in other States affect air quality in Connecticut?
L. EPA recently required 22 eastern states, including Connecticut, to develop plans that will significantly reduce nitrogen oxide emissions. Given that requirement, why is approval of these plans needed?
M. Has Connecticut met its contingency measure obligation?
N. Are conformity budgets contained in these plans?

A. What Action Is EPA Taking Today?

EPA is proposing approval of post-1996 rate-of-progress (ROP) emission reduction plans, and minor revisions to the 1990 base year inventory, submitted by the State of Connecticut for the Greater Hartford serious ozone nonattainment area, and the Connecticut portion of the NY–NJ–CT severe ozone nonattainment area, which is a multi-state ozone nonattainment area, as revisions to Connecticut's SIP. Connecticut did not enter into an agreement with New York and New Jersey to do a multi-state ROP plan, and therefore submitted a plan to reduce emissions only in the Connecticut portion of this area. EPA is proposing action today only on the Connecticut portion of the NY–NJ–CT post-1996 plan.

The post-1996 ROP plans document how Connecticut complied with the provisions of section 182(c)(2) of the Federal Clean Air Act (the Act). These sections of the Act require states containing certain ozone nonattainment areas develop strategies to reduce emissions of the pollutants that react to form ground level ozone.

B. Why Was Connecticut Required To Reduce Its Emissions of Ozone Forming Pollutants?

Connecticut was required to develop plans to reduce ozone precursor emissions because it contains ozone nonattainment areas. A final rule published by EPA on November 6, 1991 (56 FR 56694) designated portions of

Fairfield and Litchfield counties, and all of Hartford, Middlesex, New Haven, New London, Tolland and Windham counties a serious ozone nonattainment area. This area is referred to as the Greater Hartford area. Additionally, the November 6, 1999 document designated portions of Fairfield and Litchfield counties a severe ozone nonattainment area. This area is referred to as the Connecticut portion of the NY–NJ–CT area, or as Connecticut's severe area.

Section 182(c)(2) of the Act requires that serious, severe, and extreme ozone nonattainment areas develop ROP plans to reduce ozone forming pollutant emissions by 3 percent a year, averaged over each consecutive 3 year period beginning 6 years after the date of the enactment of the 1990 amendments to the Act, until the area reaches its attainment date. The first set of emission reductions are required to occur between November 1996 and November 1999, and are referred to as post-1996 ROP plan reductions.

C. Which Specific Air Pollutants Are Targeted by Connecticut's Plans?

Connecticut's post-1996 plans are geared towards reducing emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_X). These compounds react in the presence of heat and sunlight to form ozone, which is a primary ingredient of smog.

D. What Are the Sources of These Pollutants?

VOCs are emitted from a variety of sources, including motor vehicles, a variety of consumer and commercial products such as paints and solvents, chemical plants, gasoline stations, and other industrial sources. NO_X is emitted from motor vehicles, power plants, and other sources that burn fossil fuels.

E. What Harmful Effects Can These Pollutants Produce?

VOCs and NO_X react in the atmosphere to form ozone, the prime ingredient of smog in our cities and many rural areas of the country. Though ozone occurs naturally high in our atmosphere, at ground level it is the prime ingredient of smog. When inhaled, even at very low levels, ozone can:

Cause acute respiratory problems;

Aggravate asthma;

Cause significant temporary decreases in lung capacity in some healthy adults;

Cause inflammation of lung tissue;

Lead to hospital admissions and emergency room visits; and

Impair the body's immune system defenses.

F. Should I Be Concerned if I Live Near an Industry That Emits a Significant Amount of These Pollutants?

Industrial facilities that emit large amounts of these pollutants are monitored by Connecticut's environmental agency, the Department of Environmental Protection (DEP). Many facilities are required to emit air pollutants through stacks to ensure that high concentrations of pollutants do not exist at ground level. Permits issued to these facilities include information on which pollutants are being released, how much may be released, and what steps the source's owner or operator is taking to reduce pollution. The Connecticut DEP makes permit applications and permits readily available to the public for review. You can contact the Connecticut DEP for more information about air pollution emitted by industrial facilities in your neighborhood.

G. To What Degree Do Connecticut's Plans Reduce Emissions?

By 1999, Connecticut's plans will reduce VOC emissions by 26 percent and NO_x emissions by 19 percent compared to 1990 emission levels. This reduction is attributable to the control strategy outlined in the State's post-1996 plans, and in Connecticut's 15 percent ROP plans for the years 1990 to 1996. EPA approved the 15 percent ROP plans on March 10, 1999 (64 FR 12015).

Connecticut used the appropriate EPA guidance to calculate the 1999 VOC and NOx emission target levels, and the amount of reductions needed to achieve its emission target levels. EPA notes that in addressing photochemically non-reactive VOC's, Connecticut should have removed acetone from its base year inventory in addition to perchloroethylene. Although removing acetone from the inventory makes a very small change to the overall base year calculation, acetone represents a substantial portion of the VOC emission factors Connecticut used to develop base year inventory estimates for the surface coating and graphic arts area source emission categories. Proper characterization of these source categories is particularly important because Connecticut claims emission reduction credit from federal rules that limit emissions from architectural industrial maintenance coatings, and automobile refinishing coatings.

EPA has determined that if Connecticut had excluded acetone from its base year and projected, controlled emission estimates, the net impact would be 0.3 tons per summer day (tpsd) fewer emission reduction credits claimed for the severe area, and 0.9 tpsd fewer emission reduction credits claimed for the serious area. EPA is asking that Connecticut confirm in writing their agreement with this adjustment to the inventory, or submit to EPA new emission estimates that correctly remove acetone from the calculations. EPA believes that this adjustment in Connecticut's inventory constitutes a *de minimis* change. This adjustment changes Connecticut's 1999 target level by less than 0.5 percent, and has no impact on the associated control strategy. Therefore, Connecticut is not required to put this inventory adjustment for acetone out to public hearing.

Table 1 illustrates the steps used by Connecticut to derive its 1999 emission target levels for VOC and NO_X. The VOC emission values shown in parenthesis are EPA's calculation of what the proper emission values would be if acetone were removed from the area source categories mentioned above. The ROP plans submitted by Connecticut indicate that 1999 projected, controlled emissions are below the target levels for the Greater Hartford area and the Connecticut portion of the NY–NJ–CT nonattainment area. Although EPA's calculations indicate that proper adjustment of the base year inventory to exclude acetone results in VOC emissions that slightly exceed the required target level in each nonattainment area, there are substantial surplus NO_X emission reductions well below the NO_X target level that readily yield the emission reductions needed for Connecticut to meet its ROP targets in the aggregate.

TABLE 1

Description	NY–NJ–CT	NY–NJ–CT	Hartford	Hartford
	VOC	NO_X	VOC	NO_X
Step 1: 1990 Inventory	183.8	116.9	794.2	346.7

TABLE 1—Continued

Description	NY–NJ–CT	NY–NJ–CT	Hartford	Hartford
	VOC	NO_X	VOC	NO_X
Step 2: Rate-of Progress Inventory (biogenics and non-reactives subtracted).	128.2 (126.1)	116.9	408.1 (402.3)	346.7
Step 3: non-creditable reductions [1]	8.2 (1.4 of which occurs between 1996–1999).	10.0	24.2 (4.4 of which occurs between 1996–1999).	32.4
Step 4: Calculate required reduction (State will use both VOC and NO_X rdxns. to meet post-1996 ROP, as shown).	6.26%, 7.5 (7.4)	2.74%, 2.9	3.76%, 14.4 (14.2)	5.24%, 16.5
Step 5: Calculate Total Expected Reductions (sum of non-creditable and required 9% reduction.) [2].	1.4+7.5=8.9 (8.8)	10.0+2.9=12.9	4.4+14.4=18.8 (18.6)	32.4+16.5=48.9
Step 6: Set Target Level for 1999 [3]	92.9 (93.0)	104.0	306.9 (307.1)	297.9
Step 7: Projected, Controlled Emissions for 1999.	92.9 (93.3)	86.5	306.9 (308.0)	290.9

[1] States cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures (new car emission standards) promulgated prior to 1990 or for reductions resulting from requirements to lower the Reid Vapor Pressure (RVP) of gasoline promulgated prior to 1990.

[2] For VOC, only the FMVCP reductions that accrue between 1996 and 1999 are included in Step 5 because the increment that accrues between 1990 and 1996 is accounted for in development of the 1996 VOC emission target levels.

[3] For NO_X, target level = Step 2 − Step 5. For VOC, target level=1996 targets (101.8 for NY–NJ–CT area, 325.7 for Greater Hartford area) − Step 5.

Connecticut projected its base year emissions to 1999 using growth factors from a variety of sources, including the U.S. Department of Commerce's Bureau of Economic Analysis, and Connecticut State offices of the Department of Labor, Office of Policy and Management, and Department of Transportation.

H. What Changes Were Made to Connecticut's Base Year Inventory?

Connecticut made two changes to its base year emission estimates. The first change was a minor revision made to the State's on-road motor vehicle estimate. Connecticut recalculated base year emissions using the most current version of the mobile model (MOBILE 5b), and also changed the evaluation date to January 1, 1991 to maintain consistency with the evaluation date chosen for its on-road motor vehicle projection, which was January 1, 2000. The second change made was a 3.1 tpsd decrease to the NO_X base year emission estimate for a facility operated by Connecticut Light and Power, which is located in the Greater Hartford area, due to a re-evaluation of this facility's emissions. These changes are reflected in the 1990 inventory estimates shown in Table 1 above. EPA approved the Connecticut 1990 base year inventory on October 24, 1997 (62 FR 55336), and proposes to approve these *de minimis* revisions to Connecticut's inventory.

I. How Will Connecticut Achieve These Emission Reductions?

Connecticut's post-1996 control strategy matches the control strategy described in the EPA's March 10, 1999 approval of the Connecticut 15 percent plans, and also includes additional emission reductions from regulations limiting NO_X emissions from stationary point sources, VOC and NO_X emission reductions from federal measures limiting emissions from non-road engines promulgated between 1996 and 1999, and VOC and NO_X reductions from the on-road mobile sector attributable to the State's Low Emission Vehicle program. These additional control programs are further described below.

NO_X RACT

Connecticut has adopted a NO_X RACT regulation, the citation for which is 22a–174–22 of the Regulations of Connecticut State Agencies. Facilities covered by the rule needed to comply by May of 1995. Connecticut submitted the rule to EPA on May 29, 1994, as a revision to the State's SIP, and amended the rule in 1997. EPA approved Connecticut's NO_X RACT rule on October 6, 1997 (62 FR 52016).

Ozone Transport Commission (OTC) Phase II NO_X Requirements

Connecticut adopted a Phase II OTC NO_X budget rule on March 3, 1999. Facilities covered by the rule needed to comply by the 1999 ozone season. Connecticut submitted this rule to EPA on July 27, 1999, as a revision to the State's SIP. EPA approved the state's submittal in a direct final action published in the **Federal Register** on September 28, 1999 (64 FR 52233).

Connecticut applied a rule effectiveness value of 80% in determining emission reductions from the two NO_X point source controlmeasures listed above. The state determined that by 1999, these two rules will achieve 35.4 tpsd in emission reductions statewide.

Federal Non-Road Standards

In the June 17, 1994 **Federal Register** (59 FR 31306), EPA established a regulation setting final emission standards for new heavy duty compression ignition (diesel) engines. These rules adopt NO_X and smoke standards for large (>50 HP) non-road diesel engines. Additionally, in the July 3, 1995 **Federal Register** (60 FR 34581), EPA promulgated the first phase of the regulations to control emissions from new non-road spark-ignition engines. The regulation is found at 40 CFR part 90, and is titled, ''Control of Emissions From Non-road Spark-Ignition Engines.'' Connecticut correctly applied guidance contained in a November 28, 1994 EPA memorandum pertaining to the federal non-road engine control program to determine the VOC and NO_X emission reductions that will occur in the State.

The sale of reformulated gasoline in Connecticut also reduces non-road emissions in the State. The combined effect of reformulated gasoline and the new non-road standards will lower VOC emissions by 3.7 tpsd in the severe area, and 13.9 tpsd in the serious area. NO_X emissions will be lower by 0.9 tpsd in the severe area, and by 5.4 tpsd in the serious area.

Connecticut National Low Emission Vehicle Program

Connecticut submitted a National Low Emission Vehicle (NLEV) program to EPA on February 7, 1996, and February 18, 1999. The NLEV program allows auto manufacturers to commit to meet tailpipe standards for cars and light-duty trucks that are more stringent than EPA can mandate. EPA approved the State's NLEV program on March 9, 2000 (65 FR 12476).

The Connecticut ROP plans demonstrate that the VOC and NO_X emission reductions from the control strategy will achieve sufficient emission reductions to lower 1999 emission levels below the target levels calculated for each pollutant.

J. Have These Emission Reductions Improved Air Quality in Connecticut?

Ozone levels have decreased in Connecticut during the 1990's, due in part to emission reductions achieved by the State's plans. Pollution control measures implemented by States upwind of Connecticut have also helped ozone levels decline in the State.

K. Connecticut Is Downwind of Many Large Metropolitan Areas. Do Pollutants Emitted in Other States Affect Air Quality in Connecticut?

The pollutants that form ground level ozone can be transported hundreds of miles, and so pollutants emitted in other States can adversely impact air quality in Connecticut. Air pollution emitted from sources in Connecticut contribute to the State's air quality problems, and can also negatively impact air quality in areas downwind of Connecticut. Air quality modeling performed by the New England States and by the Ozone Transport Assessment Group (OTAG) indicates that ozone levels in Connecticut are highest when winds are from the south-west, which supports the conclusion that air quality in Connecticut is negatively impacted by the large metropolitan areas downwind of the state.

L. EPA Recently Required 22 Eastern States, Including Connecticut, To Develop Plans That Will Significantly Reduce Nitrogen Oxide Emissions. Given That Requirement, Why Is Approval of These Plans Needed?

The rate-of-progress plans prepared by Connecticut and other states with ozone nonattainment areas have helped lower ozone levels. Approval of these plans by EPA, and the pollution control measures associated with them, is required by the CAA and will ensure that improvements made in air quality are maintained. Additionally, approval of the regulations associated with them make the rules enforceable by EPA.

Despite the emission reductions achieved through implementation of rate-of-progress plans, many areas of the country still do not meet the one hour ozone standard. The modeling done by the OTAG for the eastern half of the United States indicates that the long distance transport of nitrogen oxides across state borders will prevent many areas from attaining this standard by relying solely on emission reductions from within their borders. The NO_X SIP call, which was published as a final rule on October 27, 1998 (63 FR 57356), required large NO_X emission reductions across the eastern half of the United States. On May 26, 1999, the U.S. Court of Appeals for the District of Columbia ordered that the EPA suspend implementation of the NO_X SIP call pending consideration of a lawsuit that has challenged its requirements. However, on December 17, 1999, EPA granted petitions filed by four northeastern states seeking to reduce ozone pollution through reductions in nitrogen oxide emissions from other states. As a result of that action, 392 facilities in 12 states will have to significantly curtail their NO_X emissions. Additionally, on March 3, 2000, the Federal Court of Appeals for the D.C. Circuit issued a ruling generally supportive of EPA's original NO_X SIP call.

As previously mentioned, these ROP plans are required by the CAA. Combined with the NO_X emission reductions EPA plans to achieve in up-wind states, these ROP plans should assure progress toward attaining the one hour ozone standard in Connecticut.

M. Has Connecticut Met Its Contingency Measure Obligation?

Ozone nonattainment areas classified as serious or above must submit to the EPA, pursuant to sections 172(c)(9) and 182(c)(9) of the Act, contingency measures to be implemented if an area misses an ozone SIP milestone or does not attain the national ambient air quality standard by the applicable date.

Table 1 indicates that Connecticut's post-1996 ROP plans achieve surplus NO_X emission reductions. Surplus amounts are calculated by subtracting the NO_X target levels in step 6 from the NO_X projected, controlled emission levels in step 7. The 17.5 tpsd surplus reductions achieved in the State's portion of the NY–NJ–CT area covers the 3.2 tpsd reduction needed to meet contingency requirements for this area, but the 7 tpsd surplus reductions for the Greater Hartford area do not cover the 9 tpsd contingency obligation for that area.

Connecticut's contingency plan proposes that 2 tons of excess NO_X emission reductions achieved in the severe area be applied in the serious area to complete that area's contingency obligation. EPA believes this is an appropriate substitution, as the serious area is immediately downwind of the severe area. Additionally, guidance issued by EPA titled, ''Guidance for Implementing the 1-Hour Ozone and Pre-existing PM10 National Ambient Air Quality Standards' includes a policy recommendation that substitution of emission reduction credits from outside of the nonattainment area for ROP purposes be allowed if certain criteria are met. Connecticut's proposed emission reduction substitution meets the criteria outlined in that guidance.

EPA notes that the minor amount of emission reduction credit over-estimation made by Connecticut due to the failure to remove acetone from the base year inventory creates minor VOC shortfalls of 0.3 tpsd in the severe area and 0.9 tpsd in the serious area. However, the large NO_X surplus that exists in each area readily compensates for this.

N. Are Conformity Budgets Contained in These Plans?

Section 176(c) of the Act, and 40 CFR 51.452(b) of the Federal transportation conformity rule require states to establish motor vehicle emissions budgets in any control strategy SIP that is submitted for attainment and maintenance of the NAAQS. Connecticut will use such budgets to determine whether proposed projects that attract traffic will ''conform'' to the emissions assumptions in the SIP.

The December 31, 1997 post-1996 rate of progress plan contained 1999 budgets for nitrogen oxides (NO_X) and volatile organic compounds (VOCs) for each nonattainment area. Table 2 contains the 1999 NO_X and VOC transportation conformity budgets in tons per summer day:

TABLE 2.—1999 BUDGETS IN THE POST-1996 ROP PLANS

Nonattainment area	VOC (tpsd)	NO_X (tpsd)
Severe area	20.5	39.4
Serious area	61.6	125.3

On February 10, 1999, Connecticut submitted 2007 budgets for NO_X and VOCs to EPA as a required component of the attainment demonstrations for the one-hour ozone standard for each

nonattainment area. Due to technical flaws EPA published a document in the **Federal Register** announcing these budgets inadequate on December 16, 1999 (64 FR 70332 and 64 FR 70348).

However, on February 15, 2000, EPA received the document entitled ''Addenda to the Ozone Attainment Demonstrations for the Southwest Connecticut Severe Ozone Nonattainment Area and Greater Connecticut Serious Ozone Nonattainment area.'' This document included the revised transportation conformity budgets for 2007 shown below in Table 3:

TABLE 3.—2007 BUDGETS

Nonattainment area	VOC (tpsd)	NO_X (tpsd)
Severe area	9.7	23.7
Serious area	30.0	79.6

Since these budgets are more restrictive, cover a time frame longer than the post-1996 ROP plans, and are based on the attainment plan, the 2007 budgets take precedence over the 1999 budgets. Furthermore, EPA New England published a document in the **Federal Register** announcing that these budgets are adequate for use in transportation conformity determinations on June 16, 2000 (65 FR 37778). Therefore, the 2007 budgets supersede the 1999 budgets. As a result, all new and revised State Transportation Improvement Programs that require a conformity determination must conform to these 2007 budgets, not the 1999 budgets contained in the post-1996 rate of progress plan.

EPA's review of this material indicates that Connecticut has met the ROP requirements of the Act, and therefore EPA is proposing to approve the Connecticut post-1996 ROP plans that were submitted as revisions to the State's SIP on December 31, 1997 and January 7, 1998. EPA also proposes approval of minor revisions to the State's 1990 base year inventory. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

II. Proposed Action

EPA is proposing to approve the rate-of-progress SIP revision and minor revisions to the 1990 base year inventory submitted by Connecticut on December 31, 1997 and January 7, 1998 as a revision to the SIP.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone Environmental protection.

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

Dated: June 20, 2000.

Mindy S. Lubber,

Regional Administrator, EPA, New England.

[FR Doc. 00–16629 Filed 6–29–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 00–96; FCC 00–195]

Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to implement certain aspects of the Satellite Home Viewer Improvement Act of 1999, which was enacted on November 29, 1999. Among other things, the act authorizes satellite carriers to add more local and national broadcast programming to their offerings and seeks to place satellite carriers on an equal footing with cable operators with respect to availability of broadcast programming. This document discusses specifically the implementation of regulations regarding the carriage of local television stations in markets where satellite carriers offer local television service to its subscribers.

DATES: Comments due July 7, 2000; reply comments are due July 28, 2000. Written comments by the public on the proposed information collections are due July 31, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before August 29, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, or via the Internet to jboley@fcc.gov, and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW., Washington, DC 20503 or via the Internet to Edward.Springer@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Ben Golant at (202) 418–7111 or via internet at *bgolant@fcc.gov.* For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (''NPRM''), FCC 00–195, adopted May 31, 2000; released June 9, 2000. The full text of the Commission's NPRM is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW., Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036, or may be reviewed via internet at http://www.fcc.gov/csb/

Synopsis of the Notice of Proposed Rulemaking

I. Introduction

1. Section 338(a)(1) of the Communications Act, adopted as part of the Satellite Home Viewer Improvement Act of 1999 (''SHVIA''), provides that after December 31, 2001: each satellite carrier providing [television broadcast signals under the compulsory copyright licensing system] to subscribers located within the local market of a television broadcast station of a primary transmission made by that station shall carry upon request the signals of all television broadcast stations located within that local market, subject to section 325(b) [retransmission consent requirement].

2. In this NPRM, we seek comment on the appropriate rules to implement this requirement. The SHVIA authorizes satellite carriers to offer more local and national broadcast programming to their viewers and makes that programming available to subscribers who previously have been prohibited from receiving broadcast programming via satellite under the compulsory licensing provisions of the copyright law. The SHVIA generally seeks to place satellite carriers on an equal footing with cable operators regarding the provisions of local broadcast programming, and thus give consumers more competitive options in selecting a multichannel video program distributor (''MVPD''). It is the clear intent of both Congress and the Commission to provide satellite subscribers with local television service in as many markets as possible.

3. Among other things, this new legislation requires satellite carriers, by January 1, 2002, to carry upon request all local broadcast stations' signals in local markets in which the satellite carriers carry at least one broadcast station signal licensed to the subject television market pursuant to section 122 of title 17, United States Code. The SHVIA conference report added the cross-reference to section 122 to the House provision to indicate the relationship between the benefits of the statutory license and the carriage requirements imposed by this Act. Until January 1, 2002, satellite carriers are granted a royalty-free copyright license to retransmit broadcast signals on a station-by-station basis, subject to obtaining a broadcaster's retransmission consent. This transition period is intended to provide the satellite industry with time to begin providing local signals into local markets—''local-into-local'' satellite service. The applicable statutory provisions, noted in greater detail below, are found in section 1008 of the SHVIA and codified at section 338 of the Communications Act of 1934, as amended (the ''Communications Act'' or ''Act'').

II. Background

4. In 1988, Congress passed the Satellite Home Viewer Act (''1988 SHVA'') in order to provide households in unserved areas of the country with access to broadcast programming via satellite. The 1988 SHVA also reflected Congress' intent to maintain the role of local broadcasters in providing free, over-the-air television. As an amendment to the Copyright Act, the 1988 SHVA accommodated the broadcasters' interests by only allowing satellite carriers to provide broadcast programming to those satellite subscribers who were unable to obtain broadcast network programming over-the-air. Since 1988, subscribership to direct-to-home satellite service has increased markedly.

5. In the SHVIA, Congress amended the law so as to permit satellite carriers to provide the signals of local broadcast stations to subscribers residing in the broadcaster's market. After December 31, 2001, satellite carriers that provide local-into-local retransmission of broadcast stations pursuant to the statutory copyright license must ''carry upon request the signals of all television broadcast stations within that local market * * *.'' The SHVIA requires the Commission to issue rules implementing this carriage requirement within one year of the SHVIA's enactment on November 29, 1999. Congress has indicated that these requirements should be comparable to those for cable systems, specifically noting paragraphs (3) and (4) of section 614(b) and paragraphs (1) and (2) of section 615(g), presently found in the mandatory broadcast signal carriage provisions in Title VI of the Act.

6. In *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues (''Broadcast Signal Carriage Order''),* the Commission implemented the broadcast signal carriage provisions of the Cable Television Consumer Protection and Competition Act of 1992 (''1992 Cable Act''). This statute the Communications Act to provide television stations with certain carriage rights on local market cable television systems. Sections 614 and 615 of the Act contain the cable television ''must carry'' requirements for commercial and noncommercial television stations, respectively. Section

325 contains retransmission consent requirements pursuant to which cable operators may be obligated to obtain the consent of commercial broadcasters before retransmitting their signals. Within local market areas, commercial television stations may elect cable carriage under either the retransmission consent or mandatory carriage requirements. Noncommercial television stations may only opt for must carry under the Act, but may nevertheless agree to be carried on a voluntary basis.

7. There are important distinctions between cable operators and satellite carriers that are implicated in attempting to harmonize section 338 with sections 614 and 615. The first significant difference is that satellite carriers have uplink facilities that are used to receive, package, and retransmit video programming. In contrast, cable operators receive, process, and distribute video programming from a local facility called a headend. This distinction is important because many cable carriage rules, such as the carriage requirement for local noncommercial television stations, rely upon the location of the cable operator's principal headend, a facility not used by satellite carriers. Second, satellite carriers have no legal obligation to have a basic service tier. Thus, they are under no obligation to place broadcast signals on such a tier of service as cable operators are required to do under the Act. Rather, section 338(d) requires satellite carriers to position local broadcast station signals on contiguous channels. Third, a satellite carrier has a general obligation to carry all television stations in a market, if it carriers one station in that market through reliance on the statutory license, without reference to a channel capacity cap. In contrast, a cable system with more than 12 usable activated channels is required to devote no more than one-third of the aggregate number of usable activated channels to local commercial television stations that may elect mandatory carriage rights. A cable system is also obligated to carry a certain number of qualified noncommercial educational television stations above the one-third cap. Fourth, satellite carriers provide a national service and need not have a franchise from local or state authorities to serve subscribers with any type of television signal nor do they have local access channel requirements. Cable operators, on the other hand, serve local franchise areas under franchise agreements with either local, county, or state authorities. Local franchise authorities often impose technical and system build-out requirements, as well as public, educational, and government access channel requirements, on cable operators. Finally, we note that 82% of all multichannel video programming distributor subscribers receive their video programming from a local franchised cable operator, while the satellite industry represents less than 15% of all MVPD subscribers. We will take into account these differences between the two industries in order to sensibly implement the requirements of section 338.

8. Direct broadcast satellite (''DBS'') operators use satellites to transmit video programming to subscribers, who must buy or rent a small parabolic ''dish'' antenna and pay a subscription fee to receive the programming service. To obtain local television signals for local distribution, DBS companies may receive the signals over-the-air or have voluntary arrangements with local stations to deliver their signals via fiber-optic cables to a local telecommunications carrier's facilities. At a certain point designated by the satellite carrier, all of the broadcast signals are digitally encoded and multiplexed together. The packet of digitized television signals are then sent, using a high capacity (DS3) line, to the satellite carriers' programming facility, or group of facilities, where they are uplinked to the appropriate satellite and then retransmitted back to subscribers' dishes in the relevant stations' market of origin.

9. The home satellite dish industry, also known as HSD or C-Band, is another type of satellite carrier subject to the SHVIA and its related provisions. C-Band subscribers use a much larger dish, some seven to ten feet in diameter, to receive video programming than that equipment used for reception by DBS subscribers. C-Band subscribers are often located in rural areas that are unserved by cable operators.

III. Satellite Broadcast Signal Carriage

A. Carriage Obligations and Definitions

10. The SHVIA has accorded satellite carriers the right to retransmit local television stations without first obtaining retransmission consent, and without a mandatory carriage obligation, for a six month period from November 29, 1999 to May 28, 2000. Beginning on May 29, 2000 and continuing until December 31, 2001, carriage of broadcast television stations by satellite carriers is a station-by-station basis pursuant to retransmission consent agreement between the station and the satellite carrier. On January 1, 2002, pursuant to section 338(a)(1) of the Act: Subject to the limitations of paragraph (2) [remedies for failure to carry], each satellite carrier providing, under section 122 of title 17, United States Code, secondary transmissions to subscribers located within the local market of a television broadcast station of a primary transmission made by that station shall carry upon request the signals of all television broadcast stations located within that located market, subject to section 325(b). This provision gives satellite carriers a choice. If satellite carriers provide their subscribers with the signals of local television stations through reliance on the statutory copyrights license, they will have the obligations to carry all of the television signals in that particular market that request carriage. If satellite carriers provide local television signals pursuant to private copyright arrangements, the section 338 carriage obligations do not apply.

11. In order to effectuate section 338, it is necessary to determine what constitutes a request for carriage, adopt procedural guidelines regarding the manner in which a broadcaster communicates its request for carriage, and set out guidelines for the satellite carrier to commence carriage. In this context, we seek comment on the meaning of the phrase ''carry upon request.'' In the cable context, the Commission initially required the cable operator to contact all local broadcast television stations, in writing, on matters relating to their carriage rights. We ask whether we should establish a similar requirement, so that satellite carriers must notify all local broadcast television stations, in writing, of their carriage rights once any local station in a particular market is being carried. We note that broadcast television stations requesting carriage must do so in writing—cable marriage of local broadcast television stations requesting mandatory carriage then commences on a specified date when the request is part of the periodic election process. We ask whether we should adopt similar procedural rules in the satellite carriage context. We also ask whether we should adopt separate procedural rules for the carriage of noncommercial educational television stations to mirror the cable carriage requirements. In addition, we ask whether the Commission should establish separate procedures to cover new broadcast stations that may commence operation in a market or for new satellite carriers similar to those established for cable carriage. Finally, we seek comment on how the section 338 mandate will work with the revised

section 325 provision regarding satellite carriers and retransmission consent.

12. Section 338 contains several definitions that provide the framework for the satellite broadcast signal carriage paradigm. While these definitions are generally self effectuating, such as the meaning of ''satellite carrier,'' ''secondary transmission,'' and ''subscriber,'' two provision require further explication to understand the scope of the satellite carriage obligation. These two provisions are as follows:

Television Broadcast Station. Section 338(h)(7) defines the term, television broadcast station, as having the meaning given such term in section 325(b)(7). Section 325(b)(7) defines television broadcast station, as an over-the-air commercial or noncommercial television broadcast station licensed by the Commission under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a low-power or translator station. We seek comment on the scope of the definition. We first note that, unlike cable operators, satellite carriers have no obligation to carry low power television stations in any instance. We also note that, unlike cable operators, satellite carriers are not required to carry noncommercial educational translator stations with five watts or higher power. We seek comment on these apparent differences and what impact they have on a satellite carrier's carriage responsibilities under section 338. A question also remains about whether satellite carriers must carry ''satellite television stations'' as cable operators are required to do. We believe that since television stations are not specifically excluded by section 338(h)(7), satellite carriers have an obligation to carry these entities if they carry other local market television stations. We seek comment on this interpretation. Finally, we ask if there are any other significant differences between the satellite carriage and cable carriage definitional requirements that affect this proceeding.

Distributor. Section 338(h)(1) of the Communications Act defines the term, distributor, as an ''entity which contracts to distribute secondary transmissions from a satellite carrier and, either as a single channel or in a package with other programming, provides the secondary transmission either directly to individual subscribers or indirectly through other program distribution entities.'' We note that the term distributor is not found in any other provision of section 338, other than the definitional subsection. Given this omission, which may or may not have been purposeful, we seek comment on the definition of distributor and its relevance in this context.

B. Market Definitions

13. Section 338(h)(3) defines the term, local market, as having the meaning it has under section 122(j) of title 17, United States Code. Section 122(j)(2)(A) defines the term, local market, in the case of both commercial and noncommercial television broadcast stations, to mean the designated market area in which a station is located, and (i) in the case of a commercial television broadcast station, all commercial television broadcast stations licensed to a community within the same designated market area within the same local market; and (ii) in the case of a noncommercial educational television broadcast station, the market includes any station that is licensed to a community within the same designated market area as the noncommercial educational television broadcast station. In addition to the area described in subparagraph (A), a station's local market includes the county in which the station's community of license is located. Section 122(j)(2)(C) defines the term, designated market area to mean the market area as determined by Nielsen Media Research and published in the 1999–2000 Nielsen Station Index Directory and Nielsen Station Index United States Television Household Estimates or any successor publication.

14. At the outset, we inquire as to why subsections (i) and (ii) were added to the overall section. It appears that they clarify that the local market includes a geographic area and all broadcast stations licensed or located within that designated area. We seek comment on this view of subsections (i) and (ii). We also seek comment on when to change the reference to the 1999–2000 Nielsen publications to reflect changes in market structure and market conditions. We note, in the cable context, that the rules account for a market update every three years. We ask whether the rules we implement under this section should be updated on a triennial basis, at another interval (*e.g.,* every year, every five years, etc.) or not at all. We also note that the cable industry is required to use the 1997–98 Nielsen publications to determine local markets for broadcast signal carriage purposes up until January 1, 2003, yet satellite carriers are obliged to use the 1999–2000 Nielsen publications for carriage purposes. We ask whether satellite carriers and cable operators should be required to use the same annual Nielsen market publications so that both may rely on the same market definition, and thus have virtually the same carriage obligations.

15. It is important to note that a regulatory mechanism exists to expand or contract the size of a local television market for cable broadcast signal carriage purposes. Pursuant to section 614(h)(1)(C), at the request of either a broadcaster or a cable operator, the Commission may, with respect to a particular commercial television broadcast station, include additional communities within its television market or exclude communities from such station's television market to better effectuate the purposes of the Act's mandatory carriage provisions. In considering market modification requests, the Act provides that the Commission shall afford particular attention, ''to the value of localism'' by taking into account such factors as (1) whether the station, or other stations located in the same are, have been historically carried on the cable system or systems within such community; (2) whether the television station provides coverage or other local service to such community; (3) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community; and (4) evidence of viewing patterns in cable and non-cable households within the areas served by the cable system or systems in such community. The Commission's inclusion of additional communities within a station's market imposes new carriage requirements on cable operators subject to the modification request while the grant to exclude communities from a station's market relieves a cable operator from its obligation to carry a certain station's television signal.

16. No such statutory mechanism exists for satellite broadcast signal carriage purposes in section 338. As a result, different carriage patterns may emerge between cable operators and satellite carriers in certain markets because a cable operator may be carrying stations that have expanded their market area while not carrying others because those stations were deleted from the relevant market area. We seek comment on whether the Commission has the authority to implement a market modification mechanism similar to section 614(h) in order to provide satellite carriers and broadcast stations the ability to modify markets for satellite carriage purposes. If so, should we use the same procedural

and evidentiary standards used for cable market modifications? Alternatively, should the Commission's previously granted market modifications be applicable to satellite carriers in the affected market areas? We seek comment on whether Commission action in this area may further the Congressional goal of harmonizing the carriage obligations between cable operators and satellite carriers.

C. Broadcast Station Delivery of a Good Quality Signal

17. Section 338(b)(1) states that, ''A television broadcast station asserting is right to carriage under subsection (a) shall be required to bear the costs associated with delivering a good quality signal to the designated local receive facility of the satellite carrier or to another facility that is acceptable to at least one-half the stations asserting the right to carriage in the local market.'' A host of novel technical and definitional questions arise under this particular provision.

18. We first seek comment on the term ''local receive facility.'' Section 338(h)(2) defines the term local receive facility as ''the reception point in each local market which a satellite carrier designates for delivery of the signal of the station for purposes of retransmission.'' There are a variety of possible technical configurations that a satellite carrier might use the receive, uplink, and distribute local market broadcast signals. Direct broadcast satellite operators, such as DirectTV and Echostar, generally appear to have one central uplink facility in the center of the country that relays content from the ground to the satellites involved. Broadcast signals from broadcast markets across the country need to be delivered to this facility. This could be accomplished using either a satellite or a terrestrial relay. It appears likely that the most economically feasible means would be to aggregate the signals in each local market at one point and deliver them over the facilities of an interstate telecommunications carrier to the uplink site(s). If this is correct, the ''local receive facility'' would be co-located at suitable carrier's switching center or ''point-of-presence.'' We seek comment on whether such a facility should be considered the ''local receive facility'' for purpose of section 338. We note that local receive facilities could also resemble, in a technical sense, a cable operator's headend, because that is where signals are received and processed. We seek comment on the parameters under which a satellite carrier may construct and designate such a facility. Aside from the above stated options, we also seek comment on other reception points a satellite carrier can consider to satisfy the provision's requirements. Finally, we seek comment on the procedures by which a satellite carrier must inform local market television stations of the location of the receive facility.

19. In addition, we seek comment on the meaning of the statutory phrase, ''to another facility that is acceptable to at least one-half the stations asserting the right to carriage in the local market.'' We read the statute to mean that a satellite carrier may establish a regional receive facility as long as one-half of broadcasters agree to that location. For example, a satellite carrier may establish a receive facility for all of New England, which encompasses several DMAs, as long as 50% of the relevant broadcasters agree on the location. We seek comment on this interpretation. We also inquire about the process by which broadcast television stations agree to the establishment and location of another facility. What did Congress intend when it included the term ''acceptable?'' What happens with those broadcast stations that do not agree to the location of the other facility? Who should pay to transmit the broadcast signals to such a facility? May the stations in the minority file a complaint with the Commission concerning the location of such a facility?

20. We also inquire about what constitutes a ''good quality signal'' as the term is used in section 338. Under the current cable carriage regime, television broadcast stations must deliver either a signal level of −45dBm for UHF signals or −49dBm for VHF signals at the input terminals of the signal processing equipment, to be considered eligible for carriage. We note that a broadcaster that does not provide a good quality signal to a cable system headend is not qualified for carriage. In this situation, a cable system is under no obligation to carry such a signal, but the broadcaster has an opportunity to provide equipment necessary to improve its signal to the requisite level and gain carriage rights. We seek comment on whether Congress intended the same result for broadcasters that do not provide a good quality signal to the local satellite receive facility. We also seek comment on whether the signal quality parameters under section 614 and the Commission's cable regulations are appropriate in the satellite carriage context.

21. With respect to the manner of testing for a good quality signal, we note that the Commission has adopted a method for measuring signal strength in the cable carriage context. Generally, if a test measuring signal strength results in an initial reading of less than −51 dBm for a UHF station, at least four readings must be taken over a two-hour period. If the initial readings are between −51 dBm and − dBm, inclusive, readings must be taken over a 24-hour period with measurements not more than four hours apart to establish reliable test results. For a VHF station, if the initial readings are less than −55 dBm, at least four readings must be taken over a two-hour period. Where the initial readings are between −55 dBm and −49 dBm, inclusive, readings should be taken over a 24-hour period, with measurements no more than four hours apart to establish reliable test results. The Commission stated that cable operators are further expected to employ sound engineering measurement practices; thus, signal strength surveys should, at a minimum, include the following: (1) Specific make and model number of the equipment used, as well as its age and most recent date(s) of calibration; (2) description(s) of the characteristics of the equipment used, such as antenna ranges and radiation patterns; (3) height of the antenna above ground level and whether the antenna was properly oriented; and (4) weather conditions and time of day when the test were done. We seek comment on whether we should require the same signal testing practices for measuring a broadcaster's signal strength in the satellite context.

22. We also seek comment on the cost of delivering a good quality signal. Under the mandatory cable carriage provisions of section 614, television stations are ''required to bear the costs associated with delivering a good quality signal or a baseband video signal to the principal headend of the cable system.'' The Commission has stated that such costs may be for ''improved antennas, increased tower height, microwave relay equipment, amplification equipment and tests that may be needed to determine whether the station's signal complies with the signal strength requirements, especially if the cable system's over-the-air reception equipment is already in place and is otherwise operating properly.'' We seek comment on which of these cost elements in the cable context are applicable in the satellite context. Are there any additional costs, in a section 338 setting, that are not mentioned above?

D. Duplicating Signals

23. Section 338(c)(1) states that: Notwithstanding subsection (a), a satellite carrier shall not be required to carry upon request the signal of any

local commercial television broadcast station that substantially duplicates the signal of another local commercial television broadcast station which is secondarily transmitted by the satellite carrier within the same local market, or to carry upon request the signals of more than one local commercial television broadcast station in a single local market that is affiliated with a particular television network unless such stations are licensed to communities in different states.

24. Section 614(b)(5) similarly provides that a cable operator is not required to carry the signal of any local commercial television station that substantially duplicates the signal of another local commercial television station which is carried on its cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network. The Commission has decided that, based on the legislative history of this section, two stations ''substantially duplicate'' each other ''if they simultaneously broadcast identical programming for more than 50 percent of the broadcast week.'' For purposes of this definition, identical programming means the identical episode of the same program series. The Commission noted that its interpretation was consistent with the 1992 Cable Act's legislative history that indicates that this phrase refers to the ''simultaneous transmission of identical programming on two stations'' and which ''constitutes a majority of the programming on each station.'' We seek comment on whether we should apply the Commission's determination of what constitutes ''substantial duplication'' under Title VI to this section of the SHVIA.

25. We seek comment on the phrase, ''affiliated with a particular television network.'' In this situation, we ask what definition of ''television network'' applies under this provision because that term is not specifically defined in section 338. We note that section 339(d) includes a definition of television network for purposes of satellite carriage of distant signals: ''The term 'television network' means a television network in the United States which offers an interconnected program service on a regular basis for 15 or more hours per week to at least 25 affiliated broadcast stations in 10 or more States.'' We ask whether we should implement the section 339(d) definition for the purposes of administering the duplication provision at issue here. Are there any alternative definitions that we should consider?

26. We also inquire about the application of the statutory phrase, ''unless such stations are licensed to communities in different states.'' Congress stated that this phrase addresses unique and limited cases, including such station pairs as WMUR (Manchester, New Hampshire) and WCVB (Boston, Massachusetts) in the Boston DMA (both ABC affiliates) as well as WPTZ (Plattsburg, New York) and WNNE (White River Junction, Vermont) in the Burlington-Plattsburgh DMA (both NBC affilates), in which mandatory carriage of both duplicating local stations upon request assures that satellite subscribers will not be precluded from receiving the network affiliate that is licensed to a community in the state in which they reside. We seek comment on whether there are other similar situations that must be addressed as we proceed with adopting rules here. In addition, we seek comment on whether there are other regulatory issues that may arise in this situation.

27. Section 338(c)(2) states that: The Commission shall prescribe regulations limiting the carriage requirements under subsection (a) of satellite carriers with respect to the carriage of multiple local noncommercial television broadcast stations. To the extent possible, such regulation shall provide the same degree of carriage by satellite carriers of such multiple stations as is provided by cable systems under section 615. Section 615(l)(1), in turn, provides that a local noncommercial educational television (''NCE'') station qualifies for cable carriage rights if it is licensed by the Commission as an NCE station and if it is owned and operated by a public agency, nonprofit foundation, or corporation or association that is eligible to receive a community service grant from the Corporation for Public Broadcasting. An NCE station is also considered qualified if it is owned and operated by a municipality and transmits predominantly noncommercial programs for educational purposes. For purposes of cable carriage, an NCE station is considered local if its community of license is within 50 miles of, or the station places a Grade B contour over, the principal headend of the cable system. Cable systems are obliged to carry local noncommercial educational television stations under a statutory paradigm based upon a cable system's number of usable activated channels. Cable systems with: (1) 12 or fewer usable activated channels are required to carry the signal of one qualified local noncommercial educational station: (2) 13–36 usable activated channels are required to carry no more than three qualified local noncommercial educational stations; and (3) more than 36 usable activated channels shall carry at least three qualified local noncommercial educational stations. At the outset, we seek comment on whether this approach is applicable in the satellite context.

28. A cable operator with cable system capacity of more than 36 usable activated channels, and carrying the signals of three qualified NCE stations, is not required to carry the signals of additional stations the programming of which substantially duplicates the programming broadcast by another qualified NCE station requesting carriage. The Act states that substantial duplication was to be defined by the Commission in a manner that promotes access to distinctive noncommercial educational television services. The Commission concluded that an NCE station does not substantially duplicate the programming of another NCE station if at least 50 percent of its typical weekly programming is distinct from programming on the other station either during prime time or during hours other than prime time. We first seek comment on whether Congress, in drafting section 338(c)(2) meant for the Commission to focus solely on the substantial duplication language of section 615 to limit satellite carriage of NCE stations or whether it intended the Commission to prescribe other means to limit such carriage. If Congress meant for the Commission to concentrate on duplication, we ask whether we should apply the definition set forth in the cable carriage context or whether we should devise a new definition for satellite carriage purposes. If we are to develop additional carriage limitations, we ask what other rules should the Commission adopt to more narrowly tailor an NCE satellite carriage requirement to make it comparable to the NCE carriage obligations imposed on cable operators.

E. Channel Positioning

29. Section 338(d) of the Communications Act states that: No satellite carrier shall be required to provide the signal of a local television broadcast station to subscribers in that station's local market on any particular channel number or to provide the signals in any particular order, except that the satellite carrier shall retransmit the signal of the local television broadcast stations to subscribers in the stations' local market on contiguous channels and provide access to such station's signals at a nondiscriminatory price and in a nondiscriminatory manner on any navigational device, on-

screen program guide, or menu. The Conference Report notes that the obligation to carry local stations on contiguous channels is to ensure that satellite carriers position local stations in a way that is convenient and practically accessible for consumers. The statutory directive for channel positioning clearly states that satellite carriers are required to present local broadcast channels to satellite subscribers in an uninterrupted series. We seek comment, however, on whether broadcast signals carried under retransmission consent must be contiguous with the television stations carried under section 338 or whether they may be presented to satellite subscribers in a non-contiguous manner.

30. We also seek comment on the phrase, ''provide access to such station's signals at a nondiscriminatory price and in a nondiscriminatory manner on any navigational device, on-screen program guide, or menu.'' We specifically seek comment on what rules the Commission should develop to ensure that television stations are accessible to satellite subscribers on nondiscriminatory terms. We ask whether there are any existing Commission rules that we may use as a model to develop regulations for this particular situation. We ask whether Congress meant that television station signals carried pursuant to mandatory carriage requests may cost no more per channel to subscribers than packages of retransmission consent television station signals or other satellite service packages. We seek comment on whether Congress meant that electronic program guide information concerning required television station signals should be presented to subscribers in the same fashion as other programming services provided by the satellite carrier.

F. Content To Be Carried

31. Section 338(g) states that, ''The regulations prescribed [under section 338] shall include requirements on satellite carriers that are comparable to the requirements on cable operators under section 614(b)(3) * * * and 615(g)(1).'' Section 614(b)(3) states that: A cable operator shall carry in its entirety, on the cable system of that operator, the primary video, accompanying audio, and line 21 closed caption transmission of each of the local commercial television stations carried on the cable system and, to the extent technically feasible, program-related material carried in the vertical blanking interval or on subcarriers. Retransmission of other nonprogram-related material (including teletext and other subscription and advertiser supported information services) shall be at the discretion of the cable operator. Where appropriate and feasible, operators may delete signal enhancements, such as ghost canceling, from the broadcast signal and employ such enhancements at the system headend or headends.

32. Section 615(g)(1), which is the noncommercial equivalent of the commercial television station provision in section 614(b)(3), states that: A cable operator shall retransmit in its entirety the primary video, accompanying audio, and line 21 closed caption transmission of each qualified local noncommercial educational television station whose signal is carried on the cable system, and, to the extend technically feasible, program-related material carried in the vertical blanking interval, or on subcarriers, that may be necessary for receipt of programming by handicapped persons or educational or language purposes. Retransmission of other material in the vertical blanking interval [''VBI''] or on subcarriers shall be within the discretion of the cable operator.

33. We seek comment on the applicability of these requirements in the satellite carriage context, especially in light of the terms ''comparable'' contained in section 338(g), above. We recognize that the Commission has not specifically defined ''primary video'' in the rules and has instead relied on the language of section 614(b)(3)(B) to clarify the scope of the term for purposes of cable broadcast signal carriage. In view of this history, we seek comment on whether a specific definition of primary video is required for satellite carriers to fulfill the requirements contained in section 338.

34. In the *Broadcast Signal Carriage Order,* the Commission decided that the factors enumerated in *WGN Continental Broadcasting, Co.* v. *United Video Inc.* (''WGN'') provided useful guidance for what constitutes program-related material. The WGN case addressed the extent to which the copyright on a television program also included program material in the VBI of the signal. The WGN court set out three factors for making a copyright determination. First, the broadcaster must intend for the information in the VBI to be seen by the same viewers who are watching the video signal. Second, the VBI information must be an integral part of the program. The court in WGN held that if the information in the VBI is intended to be seen by the viewers who are watching the video signal, during the same interval of time as the video signal, and as an integral part of the program on the video signal, then the VBI and the video signal are one copyrighted expression and must both be carried if one is to be carried. We seek comment on whether the WGN program-related analysis applies in the context of satellite broadcast signal carriage.

35. With regard to the ''technical feasibility'' of the carriage of program-related material in the VBI or on subcarriers, the Commission stated in the *Broadcast Signal Carrier Order* that such carriage should be considered ''technically feasible'' if it does not require the cable operator to incur additional expenses and to change or add equipment in order to carry such material. The Commission noted that it would consider signal carriage to be ''technically feasible'' if only nominal costs, additions or changes of equipment are necessary. We seek comment on whether the consideration of technical feasibility should be different in the context of satellite broadcast signal carriage.

36. Finally, we note that satellite carriers are required to pass through closed captions regardless of the particular arrangements by which the broadcast station is carrier. Section 79.1 of the Commission's rules, adopted to implement section 713 of the Act, requires that all video programming distributors, as defined in § 79.1(a)(2) of the Commission's rules, shall deliver all programming received from the video programming owner or other origination source containing closed captioning to receiving television households with the original closed captioning data intact in a format that can be recovered and displayed by decoders meeting the standards of § 15.119 of the Commission's rules. We take this opportunity to ask whether satellite carriers have, or will have, any difficulties in passing through closed captioning information to its subscribers. If so, wee seek comment on what measures the Commission should take to ensure that captioning information reaches its intended audience.

G. Material Degradation

37. Section 338(g) states that, ''The regulations prescribed [by the Commission under section 338] shall include requirements on satellite carriers that are comparable to the requirements on cable operators under sections 614(b)(4) * * * and 615(g)(2).'' Section 614(b)(4)(A) states that, ''The signals of local commercial television stations that a cable operator carriers shall be carried without material degradation. The Commission shall adopt carriage standards to ensure that, to the extent technically feasible, the quality of signal processing and carriage

provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal.'' Section 615(g)(2), which is the noncommercial equivalent of the commercial television station provision in section 614(b)(4), states that, ''A cable operator shall provide each qualified local noncommercial educational television station whose signal is carried in accordance with this section with bandwidth and technical capacity equivalent to that provided in commercial television broadcast stations carried on the cable system and shall carry the signal of each qualified local noncommerical educational television station without material degradation.''

38. The Conference Report noted that because of unique technical challenges on satellite technology and constraints on the use of satellite spectrum, satellite carriers may initially be limited in their ability to deliver must carry signals into multiple markets. According to the Conference Report: ''New compression technologies, such as video streaming, may help overcome these barriers, and if deployed, could enable satellite carriers to deliver must carry signals into many more markets than they could otherwise.'' The Commission is urged, pursuant to its obligations under section 338, or in any other related proceedings, ''to not prohibit satellite carriers from using reasonable compression, reformatting, or similar technologies to meet their carriage obligations, consistent with existing authority.''

39. When implementing the material degradation provision for cable carriage, the Commission relied on the technical standards as updated in the *Cable Technical Report and Order,* in defining the scope of the requirement. The *Cable Technical Report and Order* specifically addressed the issue of preventing material degradation of local television signals carried on cable systems by adopting a number of technical standards and providing that cable operators must make reasonable efforts and use good engineering practices and proper equipment to guard against unnecessary degradation in the signal received and delivered to the cable subscriber. The Commission stated that the standards adopted in the *Cable Technical Report and Order* were sufficient to satisfy the material degradation requirements contained in the 1992 Cable Act. In declining to adopt regulations in addition to those found in the *Cable Technical Report and Order,* the Commission stated that further rules may have the unwarranted effect of impeding technological advances and experimentation in the cable industry. Standards specific to digital communications were not adopted. Given the technological differences between cable operators and satellite carriers, we seek comment on whether reliance on Commission precedent in the cable carriage context regarding material degradation is appropriate and whether technical standards mirroring those in the cable television field would be warranted. We seek comment on whether we should develop new rules for satellite carriers, and if so what such rules should be, consistent with the Congressional direction on digital compression and taking into account the unique technical aspects of satellite carriage of broadcast signals.

40. It is important to note that our concerns here revolve around the satellite carrier's treatment of the broadcast signal on the equipment it controls or authorizes. Thus, our focus does not involve picture quality issues that may arise because of the type of television receiver used since the satellite carrier has little control over the use of these devices. Moreover, our analysis of material degradation recognizes that dish placement on or near the subscriber's premises can affect the quality of the picture received, but that the satellite carrier cannot control how and where dishes are installed.

41. We understand that satellite carriers use a different modulation system from cable operators—quadrature phase-shift keying or ''QPSK''—as the principal format when transmitting video programming. Thus, it is important to note at this juncture, the technical steps in the digital conversion process affecting the material degradation analysis. In satellite digital television systems, such as those implemented by DirecTV and Echostar, there are four layers of the systems where video quality may be affected. The first layer, known as the picture layer, is where decisions are made regarding the use of progressive or interlace scanning techniques as well as whether the picture will be produced in a standard definition or high definition format. The choices made in this layer will not likely affect the quality of retransmitted analog broadcasts. In the second layer, the compression layer, decisions are made regarding the types of compression techniques used. The relevant digital standard, MPEG–2, supports a wide range of compression ratios and data rates. At this layer, the satellite carrier attempts to maximize the number of channels carried on each transponder and there is an effort to place a limit on the maximum data rate of each channel. Limiting the data rate may cause the picture quality to degrade, especially when certain video scenes involve rapid motion images or there is a greater degree of camera panning and zooming. The third layer is known as the transport layer and this is where the data are structured and organized into data packets. Since most digital video systems use the MPEG packet structure, there is little likelihood that any type of degradation would occur at this level. The final layer is the transmission layer and this is where data are modulated on to a carrier for transmission. The use of high efficiency modulation techniques, such as the cable industry's QAM standard, permit greater data rate throughput. QPSK, however, is a lower order modulation and requires satellite carriers to limit the data rate or increase channel bandwidth. The chances for degradation to occur at this level are tied to the limiting data rate technique in the compression layer.

42. We specifically note that degradation may result when the satellite carrier encodes an analog broadcast signal and readies it for digital retransmission. During the encoding process, certain artifacts may be introduced into the original material that would have an effect on picture quality. The most dominant artifact is quantization noise in the picture. This effect is often visible on edges of subjects and textured areas of the image. It is caused when there is a high amount of picture detail along with a high degree of picture activity and levels of quantization are restricted due to data rate reduction. Random noise can also be introduced into the source video. This can result in activity or ''busyness'' in detail areas of the picture and tiling or flicker in other areas of the picture. Such effects are caused by the encoder attempting to encode random noise. During the encoding process, data rate reduction in combination with rapid picture changes may result in another artifact known as the ''dirty window,'' where noise appears stationary while the images behind it are moving.

43. Understanding that satellite carriers use the technical process described above in retransmitting analog broadcast signals, and keeping in mind Congress's express statement that any reasonable type of digital compression technique is permissible, we seek comment on how to define material degradation for purposes of section 338. The focus of our concern in this context is where the satellite carrier has made a conscious decision to increase the number of channels carried to the detriment of picture quality. Thus, we

seek comment on how to define the term ''material,'' but in the context of a deliberate action on the part of the satellite carrier. For example, when a broadcast television station freezes, ''tiles'' or looks ''dirty'' due to a satellite carrier's choice of encoding and compression techniques, should that be considered ''material'' or ''immaterial'' degradation? We also seek comment on whether there are certain compression ratios or encoding techniques that should be prohibited because their use would result in material degradation.

44. Aside from the matters discussed above, questions arise as to what standards and measurement techniques the Commission should employ where specific broadcast signal quality disputes arise. In the cable carriage context, where an operator carries the broadcaster's analog television signal, issues such as signal to noise ratios and ghosting have been the focus of concern. In the satellite carriage situation, where an analog broadcast signal is digitally transmitted by a satellite carrier, picture resolution is still important but bit error rates and data throughput are also relevant. Moreover, the technical standards that are employed to evaluate cable analog picture quality were adopted and refined over the course of many decades, yet the Commission has had relatively little experience in evaluating the analog to digital to analog conversion of the type involved in satellite broadcast signal carriage. We seek suggestions for measurement standards that may be used in addressing signal degradation issues.

45. We also have questions concerning the phrase ''similar technologies to meet their carriage obligations'' as it is found in this section's legislative history. We first ask what is meant by the term ''similar technologies.'' Are there any limits as to the kind of technologies a satellite carrier may use to fulfill its statutory mandates under section 338? We specifically seek comment on whether the phrase encompasses ''spot beaming,'' where a satellite carrier delivers programming to a discrete geographical location using a specialized satellite. If so, what are the implications for using such technology in the satellite broadcast signal carriage context.

H. Digital Television

46. Section 338(g) states: ''The regulations prescribed [by the Commission under Section 338] shall include requirements on satellite carriers that are comparable to the requirements on cable operators under sections 614(b)(4) * * *.'' Section 614(b)(4)(B) of the Act provides: ''At such time as the Commission prescribes modifications of the standards for television broadcast signals, the Commission shall initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed to conform with such modified standards.'' The Conference Report stated: ''By directing the FCC to promulgate these must carry rules [found in section 338], the conferees do not take any position regarding the application of must-carry rules to carriage of digital television signals by either cable or satellite systems.''

47. The Commission has adopted rules establishing a transitional process for the conversion from an analog to a digital form of broadcast transmission. The rules allow each existing analog television licensee or each eligible permittee to construct or operate digital facilities with a roughly comparable service area using 6 MHz of spectrum, in addition to the 6 MHz of spectrum used for analog broadcasting. The broadcast station will transmit a signal consistent with the standards adopted in *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service,* Fourth Report and Order in MM Docket No. 87–268, giving it the flexibility to broadcast in a high definition mode, in a multiple program standard definition mode, in a datacasting mode, or a mixture of all three. During the transition period, both the analog and digital television signals will be broadcast. At the end of the transition which is scheduled for the year 2006, with certain statutory exceptions, the station is to cease broadcasting an analog signal and will return to the government 6 MHz of spectrum.

48. The rules governing the transition from analog to digital broadcasting are found in *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service,* Fifth Report and Order in MM Docket 87–268 (''Fifth Report and Order''). The *Fifth Report and Order* set forth a phased-in implementation schedule for the introduction of digital broadcast television. Construction requirements vary depending on the size of the television market and other factors.

49. In July 1998, the Commission commenced a proceeding to determine the carriage obligations cable operators should have with regard to a broadcast station's digital television signal during the transition period to digital television. We sought comment on that proceeding on how to accomplish the Congressional goals reflected in Sections 614, 615, and 325 of the Act in light of the significant changes to the relevant industries resulting from the conversion to digital operations. The thrust of the proceeding was to examine the timing and scope of digital broadcast signal carriage obligations for cable operators. The Commission proposed seven carriage options for the transition period ranging from an immediate dual carriage regime, where a cable operator would carry both the analog and digital signals at the same time, to the no carriage options, where a cable operator would be under no obligation to carry the station's digital signal until after the transition period has ended.

50. When this proceeding was initiated, there was no satellite broadcast signal carriage requirement, and satellite carriers apparently did not find it necessary to comment on the issues addressed in that proceeding. Thus, we seek comment on whether satellite carriers should be required to carry digital broadcast television signals in addition to analog broadcast signals up until the time that television stations return their analog spectrum to the government. What are the costs and benefits of such a requirement? In what ways would a dual carriage rule limit the number of markets satellite carriers can serve with analog broadcast signals alone? Moreover, would satellite carriers have to drop existing non-broadcast programming to accommodate digital television signals? To what extent should any digital carriage requirements for satellite carriers be consistent with those for cable operations?

I. Compensation for Carriage

51. Section 338(e) states: ''A satellite carrier shall accept or request monetary payment or other valuable consideration in exchange either for carriage of local television broadcast stations in fulfillment of the requirements of this section or for channel positioning rights provided to such stations under this section, except that any such station may be required to bear the costs associated with delivering a good quality signal to the local receive facility of the satellite carrier.'' We will consider the costs associated with delivering a good quality signal as part of our consideration of the several related local receive facility issues, discussed above. This provision largely parallels provisions applicable to cable operators that are found in sections 614(b)(10) and 615(i) of the Act that are implemented in § 76.60 of the

Commission's rules. In the cable context, commercial broadcasters elect either must carry or retransmission consent to obtain carriage of their signals. If mandatory carriage is selected, there are no specific terms for carriage that must be requested, other than choosing the relevant channel positioning options available to broadcasters under the Act. If retransmission consent is selected, the operator may receive compensation from the broadcaster in exchange for carriage. We assume the same general policy is intended here and that a broadcaster seeking carriage rather than requesting carriage ''in fulfillment of the requirements of [section 338]'' would simply negotiate carriage provisions, including payment terms, in the context of a retransmission consent negotiation. We seek comment on this interpretation. We also seek comment on the policy underlying this provision and its purpose in the statutory scheme.

J. Remedies

52. Section 338(a)(2) states that the remedies for any failure to meet the obligations under subsection (a) (carriage obligations) shall be available exclusively under section 501(f) of title 17, United States Code. New section 501(f)(1) states: ''With respect to any secondary transmission that is made by a satellite carrier of a performance or display of a work embodied in a primary transmission and is actionable as an act of infringement under section 122, a television broadcast station holding a copyright or other license to transmit or perform the same version of that work shall, for purposes of subsection (b) of this section, be treated as a legal or beneficial owner if such secondary transmission occurs within the local market of that station.'' New section 501(f)(2) further provides: ''A television broadcast station may file a civil action against any satellite carrier that has refused to carry television broadcast signals, as required under section 122(a)(2), to enforce that television broadcast station's rights under section 338(a) of the Communications Act of 1934.'' As it appears that the Commission is not the statutory venue to remedy non-carriage of broadcast station signals by satellite carriers, we believe that there is not need for us to implement Section 338(a)(2). We seek comment on this view.

53. Section 338(f)(1) of the Communications Act states: ''Whenever a local television broadcast station believes that a satellite carrier has failed to meet its obligations under subsections (b) through (e) of this section [(b) good signal required, (c) duplication not required, (d) channel positioning, and (e) compensation for carriage], such station shall notify the carrier, in writing, of the alleged failure and identify its reasons for believing that the satellite carrier failed to comply with such obligations. The satellite carrier shall, within 30 days after such written notification, respond in writing to such notification and comply with such obligations or sate its reasons for believing that it is in compliance with such obligations. A local television broadcast station that disputes a response by a satellite carrier that it is in compliance with such obligations may obtain review of such denial or response by filing a complaint with the Commission. Such complaint shall allege the manner in which such satellite carrier has failed to meet its obligations and the basis for such allegations.'' In addition, section 338(f)(2) states: ''The Commission shall afford the satellite carrier against which a complaint is filed under paragraph (1) an opportunity to present data and arguments to establish that there has been no failure to meet its obligations under this section.

54. Section 338(f)(3) of the Communications Act states: ''Within 120 days after the date a complain is filed under paragraph (1), the Commission shall determine whether the satellite carrier has met its obligations under subsections (b) through (e). If the Commission determines that the satellite carrier has failed to meet such obligations, the Commission shall order the satellite carrier to make appropriate remedial action. If the Commission determines that the satellite carrier has fully met the requirements of such subsections, the Commission shall dismiss the complaint.'' We seek comment on the meaning of the phrase, ''appropriate remedial action'' for each of the relevant subsections. We also ask whether the payment of forfeitures for non-compliance would fall under the ''appropriate remedial action'' rubric.

55. These provisions clearly state the remedial procedures for satellite carrier violations of section 338, with subsection 338(a) providing a remedy for failure to carry and subsection 338(f) providing specific remedies for unique carriage violations. We seek comment on two additional issues, however. First, we seek comment on how the section 501(f) remedial limitation in section 338(a)(2) relates to the complaint process set forth in section 338(f). For example, if a satellite carrier refuses to carry a broadcast station signal because of a signal quality dispute, would the broadcaster pursue its remedy in court, at the Commission, or would both fora be available? In addition, it appears that a broadcaster cannot file a complaint against a satellite carrier for non-compliance with the content-to-be-carried or material degradation provisions as the SHVIA specifically referenced those issues in section 338(g) rather than in (b) through (e), as provided in section 338(f). We seek comment on this interpretation. If this is the correct reading of the statute, should the Commission nonetheless include those issues as subject to the complaint process under its general authority to administer the Communications Act?

IV. Procedural Matters

A. Ex Parte Rules

This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but disclose'' requirements under § 1.1206(b) of the Commission's rules. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commissions rules.

B. Filing of Comments and Reply Comments

56. Pursuant to applicable procedures set forth in § 1.415 and 1.419 of the Commission's rules, interested parties may file comments regarding this NPRM on or before July 7, 2000 and reply comments on or before July 28, 2000. Comments may be filed using the Commission'e Electronic Comment Filing System (''ECFS'') or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc/e-file/ecfs.html. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters

should include their full name, Postal service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, ''get form your e-mail address.'' A sample form and directions will be sent in reply.

57. Written comments by the public on the proposed information collections are due July 31, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before August 29, 2000. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW, Washington, DC 20503 or via the Internet to *Edward.Springer@omb.eop.gov.*

58. Parties who choose to file by paper must file an original and four copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filing must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. The Cable Services Bureau contact for this proceeding is Ben Golant at (202) 418–7111, TTY (202) 418–7172, or at bgolant@fcc.gov.

59. Parties who choose to file by paper should also submit their comments on diskette. Parties should submit diskettes to Ben Golant, Cable Services Bureau, 445 12th Street NW, Room 4–A803, Washington, DC 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible form using MS DOS 5.0 and Microsoft Word, or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''ready only'' mode. The diskette should be clearly labeled with the party's name, proceeding (including the lead docket number in this case, CS Docket No. 00–96), type of pleading (comments or reply comments), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, referable in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, International Transcription Service, 1231 20th Street, NW, Washington, DC 20036.

C. Paperwork Reduction Act Statement and Initial Regulatory Flexibility Act Statement

60. This NPRM contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections(s) contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. OMB notification of action is due August 29, 2000. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–xxxx

Title: Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues.

Type of Review: New collection or revision of existing collection.

Respondents: Business or other for-profit entities.

Number of Respondents: Satellite carriers—xxxx.

Estimated Time Per Response: xxxx hours.

Total Annual Burden: xxxx.

Cost to Respondents: xxxx.

Needs and Uses: Congress directed the Commission to adopt regulations that apply broadcast signal carriage requirements to satellite carriers pursuant to the changes outlined in the Satellite Home Viewer Improvement Act of 1999. The availability of such information will serve the purpose of informing the public of the method of broadcast signal carriage.

Initial Regulatory Flexibility Analysis

a. As required by the Regulatory Flexibility Act (''RFA''), the Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') of the possible significant economic impact on small entities by the possible policies and rules that would result from the NPRM of Proposed Rulemaking (''NPRM'') Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy on of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register.**

b. *Need for, and Objectives of, the Proposed Rules* Sections 38(g) of the Communications Act of 1934, as amended (''Act''), directed the Commission, within one year of enactment of the Satellite Home Viewer Improvement Act of 1999, to ''issue regulations implementing this section following a rulemaking proceeding.'' The relevant provisions concern the carriage of all local television broadcast station signals by satellite carriers commencing on January 1, 2002.

c. *Legal Basis.* The authority for the action proposed in this rulemaking is contained in sections 1, 4(i) and (j), 338,614 and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 338, 534, and 535.

d. *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The IRFA 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 rules. The IFRA 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. Under the Small Business Act, a small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). The rules we will adopt as a result of the NPRM will affect television station licensees and satellite carriers.

e. *Television Stations.* The proposed rules and policies will apply to television broadcasting licenses, and potential licensees of television service. The Small Business Administration

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, other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program material are classified under another SIC number.

f. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates that follow of small businesses to which rules may apply to not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. As additional element of the definition of ''small business'' is that the entity must be independently owned and operated. As discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which rules may apply may be over-exclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,616 operating television broadcasting stations in the nation as of September 1999. For 1992, the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.Thus, the new rules will affect approximately 1,616 television stations; approximately 77% per 1,230 of those stations are considered small business. These estimates may overstate the number of small entities since the revenue figures on which they are based on not include or aggregate revenues from non-television affiliated companies.

g. *Small MVPDs:* SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes cable system operators, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue. We address below service individually to provide a more precise estimate of small entities.

h. *DBS:* There are four licensees of DBS services under part 100 of the Commission's rules. Three of those licensees are currently operational. Two of the licensees which are operational have annual revenues which may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge that there are entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

i. *HSD:* The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) Viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

j. According to the most recently available information, there are approximately 30 program packagers nationwide offering packages of scrambled programming to retail consumers. These program packages provide subscriptions to approximately 2,314,900 subscribers nationwide. This is an average of about 77,163 subscribers per program package. This is substantially smaller than the 400,000 subscribers used in the commission's definition of a small MSO. Furthermore, because this is an average, it is likely that some program packagers may be substantially smaller.

k. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* In order to implement the Satellite Home Viewer Improvement Act of 1999, the Commission has proposed to add new rules. We have yet to determine whether to amend existing provisions of the Commission's rules, or to adopt some other regulatory framework or procedures concerning satellite broadcast signal carriage. There are certain compliance requirements involving the satellite broadcast signal carriage process. Foremost is satellite carriers will have to carry all local television stations in a given market if it decides to carry at least one signal in a market. There will be costs relating to the time and effort involved in carrying all local broadcast signals.

l. In terms of recordkeeping, entities most will likely have to keep a record of their election status and entities may be required to maintain such information within their business environment and may also have to file such information with the Commission.

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

n. As indicated, the NPRM proposes to implement certain aspects of the Satellite Home Viewer Improvement Act of 1999. Among other things, the new legislation requires satellite carriers to carry all local television broadcast stations in a market, if it carries any local market television stations, by January 1, 2002. This document also discusses implementing regulations relating to the scope and substance of local broadcast signal carriage by satellite carriers. This legislation applies

to small entities and large entities equally. At this time, small entities are not treated differently and might not be impacted differently, but we seek comment.

o. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals. None.

61. Pursuant to section 1008 of the Satellite Home Viewer Improvement Act of 1999, *notice is hereby given* of the proposals described in this NPRM.

62. The Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–16185 Filed 6–29–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG12

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Arkansas River Basin Population of the Arkansas River Shiner

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of supplementary information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for the Arkansas River Basin population of the Arkansas River shiner (*Notropis girardi*). This proposal is made in response to a court settlement in *Center for Biological Diversity* v. *Bruce Babbitt, et al.* C99–3202 SC, directing us to submit for publication in the **Federal Register** a proposal to withdraw the existing ''not prudent'' critical habitat determination together with a new proposed critical habitat determination for the Arkansas River Basin population of the Arkansas River shiner by June 23, 2000, and to invite public comment for 60 days. We are proposing as critical habitat a total of approximately 1,866 kilometers (1,160 miles) of rivers and 91.4 meters (300 feet) of their adjacent riparian zones. Proposed critical habitat includes portions of the Arkansas River in Kansas, the Cimarron River in Kansas and Oklahoma, the Beaver/North Canadian River in Oklahoma, and the Canadian/South Canadian River in New Mexico, Texas, and Oklahoma. If this proposed rule is finalized, Federal agencies proposing actions that may affect the areas designated as critical habitat must consult with us on the effects of the proposed actions, pursuant to section 7(a)(2) of the Act.

DATES: We will consider all comments on the proposed rule and the draft environmental assessment received from interested parties by August 29, 2000. We will hold public hearings in Amarillo, Texas, on August 7, 2000; in Oklahoma City, Oklahoma, on August 9, 2000; and in Pratt, Kansas, on August 11, 2000. We will start all hearings promptly at 3:00 p.m. and end them no later than 5:30 p.m. We must publish a final determination on this proposal by March 14, 2001, provided we determine that we do not need to prepare an Environmental Impact Statement to comply with NEPA.

ADDRESSES: 1. Send your comments on the proposed rule and draft environmental assessment to the U.S. Fish and Wildlife Service, Oklahoma Ecological Services Office, 222 S. Houston, Suite A, Tulsa, Oklahoma 74127–8909.

2. The complete file for this proposed rule will be available for public inspection, by appointment, during normal business hours at the above address. The draft environmental assessment is available by writing to the above address, or by connecting to our web site at http://ifw2es.fws.gov/oklahoma/. The draft economic analysis will be available during the public comment period. We will specify its availability in local newspapers and through a notice in the Federal Register.

3. We will hold the Amarillo hearing at Texas A&M University Agricultural Research and Extension Center, 6500 Amarillo Boulevard West, Amarillo, Texas. We will hold the Oklahoma City hearing at the Conservation Education Center Auditorium, Oklahoma City Zoo, 2101 NE 50th, Oklahoma City, Oklahoma. We will hold the Pratt hearing at the Carpenter Auditorium, Pratt Community College, 348 NE State Road 61, Pratt, Kansas.

FOR FURTHER INFORMATION CONTACT: Ken Collins, Oklahoma Ecological Services Office, at the above address; telephone 918/581–7458, facsimile 918/581–7467.

SUPPLEMENTARY INFORMATION:

Background

The Arkansas River shiner is a small, robust minnow with a small, dorsally flattened head, rounded snout, and small subterminal mouth (located near the head end of the body but not at the extreme end) (Miller and Robison 1973, Robison and Buchanan 1988). Dorsal (back) coloration tends to be light tan, with silvery sides gradually grading to white on the belly. Adults attain a maximum length of 51 millimeters (2 inches). Dorsal, anal, and pelvic fins all have eight rays, and there is a small, black chevron usually present at the base of the caudal fin.

The Arkansas River shiner was first described based on fish collection in 1926 from the Cimarron River northwest of Kenton, Cimarron County, Oklahoma (Hubbs and Ortenburger 1929). Historically, the Arkansas River shiner was widespread and abundant throughout the western portion of the Arkansas River basin in Kansas (KS), New Mexico (NM), Oklahoma (OK), and Texas (TX). This species has disappeared from more than 80 percent of its historical range and is now almost entirely restricted to about 820 kilometers (km) (508 miles (mi)) of the Canadian River in OK, TX, and NM (Larson *et al.* 1991; Pigg 1991). An extremely small population may still persist in the Cimarron River in OK and KS, based on the collection of only nine individuals since 1985. A remnant population also may persist in the Beaver/North Canadian River of OK, based on collection of only four individuals since 1990 (Larson *et al.* 1991; Jimmie Pigg, Oklahoma Department of Environmental Quality, pers. comm., 1993).

In 1999, six Arkansas River shiner were collected from the Arkansas River in Wichita, KS, at two locations—four from near the 47th Street South bridge and two near the Kansas State Highway 96 crossing (Vernon Tabor, U.S. Fish and Wildlife Service, Manhattan, KS, pers. comm., 2000). Prior to this collection, the Arkansas River shiner was believed to be extirpated from the Arkansas River. An accurate assessment of Arkansas River shiner populations in the Arkansas, Cimarron, and Beaver/North Canadian rivers is difficult because the populations may be so small that individuals may escape detection during routine surveys. The small size of Arkansas River shiner aggregations in these three rivers significantly reduces the likelihood that these populations will persist over evolutionarily significant timescales in the absence of intensive conservation efforts.

The decline of this species throughout its historical range is primarily the result of modification of the duration and timing of stream flows and inundation by impoundments, channel desiccation by water diversion and groundwater mining, stream channelization, and introduction of non indigenous species. Additional information on the biology and status of this species can be found in the November 23, 1998, final listing determination (63 FR 64772). Biological factors relevant to the species' habitat needs are discussed in the Primary Constituent Elements portion of this proposed rule.

Previous Federal Action

We included the Arkansas River shiner in our September 18, 1985, Review of Vertebrate Wildlife (50 FR 37958) as a category 2 candidate for listing. Category 2 included those taxa for which information indicated that a proposal to list as endangered or threatened was possibly appropriate, but for which conclusive data on biological vulnerability and threats were not currently available to support a proposed rule. Our January 6, 1989, revised Animal Notice of Review (54 FR 554) retained this status for the Arkansas River shiner.

We first received detailed information on the status of the species in 1989 (Pigg 1989). A partial status survey by Larson *et al.* (1990) was a source of additional information. We subsequently prepared a status report on this species (U.S. Fish and Wildlife Service 1990). Following this report, Larson *et al.* (1991) and Pigg (1991) provided comprehensive status survey information. In our November 21, 1991, Animal Candidate Review for Listing as Endangered or Threatened Species (56 FR 58804), we reclassified the Arkansas River shiner as a category 1 candidate. At that time, category 1 (now referred to as candidates) included those taxa for which we had substantial information on biological vulnerability and threats to support proposals to list the taxa as endangered or threatened. In our February 28, 1996, candidate Notice of Review (61 FR 7596), we discontinued the designation of category 2 candidates.

We published a proposed rule to list the Arkansas River basin population of the Arkansas River shiner as endangered and invited public comment on August 3, 1994 (59 FR 39532). A nonnative population of the Arkansas River shiner that has become established in the Pecos River was not included in that proposal. We reopened the comment period from January 6, 1995, to February 3, 1995, (60 FR 2070) to accommodate three public hearings. Following lifting of a moratorium on issuing final listings or critical habitat designations on April 26, 1996, we again reopened the comment period on the proposal on December 5, 1997 (62 FR 64337). We published the final rule listing the Arkansas River basin population of the Arkansas River shiner as a threatened species on November 23, 1998 (63 FR 64772).

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. The term ''conservation,'' as defined in section 3(3) of the Act, means ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary'' (*i.e.,* the species is recovered and removed from the list of endangered and threatened species).

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that critical habitat is not prudent if one or both of the following situations exist—(i) the species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of this threat, or (ii) designation of critical habitat would not be beneficial to the species. In the final rule listing the Arkansas River Basin population of the Arkansas River shiner (63 FR 64772), we found that designation of critical habitat was not prudent because we believed critical habitat would not provide any additional benefit beyond that provided through listing as threatened.

In the last few years, a series of court decisions have overturned several of our determinations made for different species that designation of critical habitat would not be prudent (for example, *Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have reexamined the question of whether designation of critical habitat for the Arkansas River Basin population of the Arkansas River shiner is prudent.

As part of a settlement order of February 16, 2000, in *Center for Biological Diversity* v. *Bruce Babbitt, et al.* C99–3202 SC, we agreed to reconsider the question of whether critical habitat would be prudent; and, if designation of critical habitat is prudent, we agreed to subsequently propose designation of critical habitat for the Arkansas River Basin population of the Arkansas River shiner by June 23, 2000.

Upon further consideration, we believe designation of critical habitat for the Arkansas River shiner may be of some benefit. A critical habitat designation benefits species conservation primarily by identifying important areas and by describing the features within those areas that are essential to conservation of the species, alerting public and private entities to the areas' importance. Although the designation of critical habitat does not, in and of itself, restrict human activities within an area or mandate any specific management or recovery actions, it does help focus Federal, tribal, State, and private conservation and management efforts in such areas. Designating critical habitat may also provide some educational or informational benefits.

The primary regulatory impact of a critical habitat designation is through the provisions of section 7 of the Act, which applies only to actions with Federal involvement (*e.g.,* actions authorized, funded, or conducted by a Federal agency) and does not affect exclusively State or private activities. Critical habitat designation assists Federal agencies in planning future actions, because the designation establishes, in advance, those habitats that will be given special consideration in section 7 consultations. With a designation of critical habitat, potential conflicts between Federal actions and endangered or threatened species can be identified and possibly avoided early in the agency's planning process.

Conservation benefits can occur when critical habitat is designated in historically inhabited areas outside the species' current range, particularly where the importance of the area would have been overlooked had critical habitat not been designated. For example, initiation of section 7 consultation may not be required for a Federal action in unoccupied habitat,

but would be required if that area had been designated critical habitat. The designation of currently unoccupied areas as critical habitat is allowed under section 3(5)(A)(I) of the Act, which provides that areas outside the geographical area occupied by the species at the time it was listed as endangered or threatened may be designated critical habitat upon a determination that such areas are essential for the conservation (*i.e.,* recovery) of the species. We find that all areas proposed in this rule are essential for the conservation of the Arkansas River Basin population of the Arkansas River shiner.

Given the above, we believe that designation of critical habitat will likely provide some conservation benefit to the Arkansas River Basin population of the Arkansas River shiner, and can foresee no detrimental conservation effects of designation. We therefore find that critical habitat designation is prudent.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We can exclude areas from critical habitat designation if we determine that the benefits of exclusion outweigh the benefits of including the areas as critical habitat, provided the exclusion will not result in the extinction of the species.

In proposing critical habitat for the Arkansas River shiner, we reviewed the overall approach to the conservation of the species undertaken by local, State, tribal, and Federal agencies and private individuals and organizations since the species' listing in 1998. We also solicited information from knowledgeable biologists and reviewed the available information pertaining to habitat requirements of the species. The proposed critical habitat described below constitutes our best assessment of areas essential for the conservation of the Arkansas River shiner and is based on the best scientific and commercial information available. The areas proposed either currently support populations of the Arkansas River shiner, or they currently have, or have the potential for developing, the necessary requirements for survival, growth, and reproduction of the Arkansas River shiner. All of the proposed areas require special management consideration and protection to ensure their contribution to the species' recovery.

Important considerations in selection of areas proposed in this rule include factors specific to each river system, such as size, connectivity, and habitat diversity, as well as range-wide recovery considerations, such as genetic diversity and representation of all major portions of the species' historical range. Each area contains stream reaches with interconnected waters so that individual Arkansas River shiner can move between areas, at least during certain flows or seasons. The ability of the fish to repopulate areas where they have been depleted or extirpated is vital to recovery. Some areas include stream reaches that do not have optimum Arkansas River shiner habitat, but provide migration corridors. Additionally, these reaches play a vital role in the overall health of the aquatic ecosystem and, therefore, the integrity of upstream and downstream Arkansas River shiner habitats. The critical habitat proposed reflects the need for areas of sufficient stream length to provide habitat for Arkansas River shiner populations large enough to be self-sustaining over time, despite fluctuations in local conditions.

In considering this designation, we took into account that preferred habitat for the Arkansas River shiner is the mainstems of larger plains rivers. The best scientific information available indicates that recovery of this species will depend on conservation of relatively long stretches of large rivers. Historically, the species has been documented from several smaller tributaries (*e.g.* Skeleton Creek, Wildhorse Creek, and others) to these rivers (Larson *et al.* 1991). Examination of the collection records provided in Larson *et al.* (1991) shows that about 53 percent of the reported capture dates for Arkansas River shiner in these smaller tributaries occurred during the months of June and July. Another 18 percent occurred during the months of May and August. Consequently, we believe that these tributaries are occupied only during certain seasons during higher flows and do not represent optimum habitat. We note, however, that all tributaries, no matter their size, are important in contributing flows to the proposed critical habitat reaches and that actions substantially reducing those flows may adversely affect critical habitat. Additionally, newly hatched Arkansas River shiner seek mouths of tributaries where food is more abundant (Moore 1944). This proposed designation (see Lateral Extent of Critical Habitat) would include small sections of the tributaries near their confluence, which are important rearing areas for larval Arkansas River shiner.

Stabilization of the Arkansas River shiner at its present population level and distribution will not achieve conservation. The overall trend in the status of the Arkansas River shiner has been characterized by dramatic declines in numbers and range despite the fact that this species evolved in rapidly fluctuating, harsh environments. None of the threats affecting the Arkansas River shiner have been eliminated since the fish was listed; consequently, known Arkansas River shiner aggregations remain vulnerable to those natural or manmade factors that might further reduce population size. If recovery actions fail to reverse Arkansas River shiner declines in the Canadian/South Canadian River, the species' vulnerability to catastrophic events, such as the introduction of the Red River shiner (*Notropis bairdi*), or a prolonged period of low or no flow, would increase. The remaining self-sustaining aggregations are fragmented and isolated to essentially one river system. Recovery through protection and enhancement of the existing populations, plus reestablishment of populations in suitable areas of historical range, are necessary for the species' survival and recovery.

The inclusion of both occupied and currently unoccupied areas in the proposed critical habitat for Arkansas River shiner is in accordance with the Act. Restoration of Arkansas River shiner populations to additional portions of their historical range significantly reduces the likelihood of extinction due to any natural or manmade factors that might otherwise further reduce population size. We anticipate that a vital recovery component for this species will involve establishment of secure, self-sustaining populations in habitats from which the species has been extirpated. We believe excluding areas outside the currently occupied range of the Arkansas River shiner from the critical habitat designation would be inadequate to ensure the conservation of the species. Therefore, we determine that the unoccupied areas proposed as critical habitat are essential for the conservation of the species.

Proposed Critical Habitat Designation

Table 1 shows approximate river lengths of occupied and unoccupied habitat in each county in which critical habitat is proposed. The proposed designation encompasses approximately 1,866 km (1,160 mi) of stream channels and adjacent areas (see Lateral Extent of Critical Habitat, below). However, the amount of stream channel actually proposed for critical habitat in Oklahoma is less than this amount because these figures were derived from

adding county totals, and where the river forms a county boundary, that length is included in both county totals.

The proposed designation is divided among five reaches found within portions of four river systems. The areas we selected for proposed critical habitat designation contain most, if not all, of the remaining genetic diversity within the Arkansas River Basin and include a representation of each major subbasin within the historical range of the species. The proposed designation incorporates more than 95 percent of the currently known aggregations of Arkansas River shiner in the Arkansas River basin, including the remnant populations that may still persist in the Arkansas, Cimarron, and Beaver/North Canadian rivers. The proposed designation also includes currently unoccupied areas in the Arkansas, Cimarron, and Beaver/North Canadian rivers that are considered essential for future restoration and recovery of the species.

TABLE 1.—RIVER DISTANCES, BY COUNTY, FOR OCCUPIED AND UNOCCUPIED PROPOSED CRITICAL HABITAT FOR THE ARKANSAS RIVER SHINER

[Information derived from USGS National Atlas 1:2,000,000 scale hydrography data sets]

County	Occupied		Unoccupied		Total	
	Kilometers	Miles	Kilometers	Miles	Kilometers	Miles
Kansas:						
Barton	27.3	16.9	17.1	10.6	44.4	27.5
Clark	20.7	12.8	9.2	5.7	29.9	18.5
Comanche	.....	0.0	9.8	6.1	9.8	6.1
Cowley	45.4	28.1	.....	0.0	45.4	28.1
Edwards	.....	0.0	38.4	23.8	38.4	23.8
Finney	.....	0.0	42.5	26.4	42.5	26.4
Ford	.....	0.0	67	41.5	67	41.5
Gray	.....	0.0	41.6	25.8	41.6	25.8
Hamilton	.....	0.0	20.5	12.7	20.5	12.7
Kearney	.....	0.0	44.3	27.5	44.3	27.5
Meade	28.6	17.7	.....	0.0	28.6	17.7
Pawnee	.....	0.0	48.1	29.8	48.1	29.8
Reno	54.3	33.7	.....	0.0	54.3	33.7
Rice	32.3	20.0	.....	0.0	32.3	20.0
Sedgwick	73.3	45.4	.....	0.0	73.3	45.4
Seward	15	9.3	.....	0.0	15	9.3
Sumner	32.1	19.9	.....	0.0	32.1	19.9
Subtotal	329	204.0	338.5	209.9	667.5	413.9
New Mexico:						
Quay	51.8	32.1	.....	.....	51.8	32.1
Subtotal	51.8	32.1	.....	.....	51.8	32.1
Oklahoma:						
Beaver	137.7	85.4	.....	0.0	137.7	85.4
Blaine	40.3	25.0	.....	0.0	40.3	25.0
Caddo	0.8	0.5	.....	0.0	0.8	0.5
Canadian	71.4	44.3	.....	0.0	71.4	44.3
Cleveland	81.2	50.3	.....	0.0	81.2	50.3
Custer	9.6	6.0	.....	0.0	9.6	6.0
Dewey	98.3	60.9	.....	0.0	98.3	60.9
Ellis	84.3	52.3	.....	0.0	86.1	53.4
Grady	37	22.9	.....	0.0	37	22.9
Harper	61.9	38.4	26.3	16.3	88.2	54.7
Hughes	70	43.4	.....	0.0	70	43.4
Major	.....	0.0	3.4	2.1	3.4	2.1
McClain	104.1	64.5	.....	0.0	104.1	64.5
McIntosh	8.2	5.1	.....	0.0	8.2	5.1
Pittsburg	27	16.7	.....	0.0	27	16.7
Pontotoc	80.4	49.8	.....	0.0	80.4	49.8
Pottawatomie	44.5	27.6	.....	0.0	44.5	27.6
Roger Mills	84.3	52.3	.....	0.0	84.3	52.3
Seminole	48.5	30.1	.....	0.0	48.5	30.1
Texas	16.1	10.0	.....	0.0	16.1	10.0
Woods	.....	0.0	214.9	133.2	214.9	133.2
Woodward	1.9	1.2	127.6	79.1	129.5	80.3
Subtotal*	1,107.5	686.7	372.2	230.8	1,481.5	918.5
Texas:						
Hemphill	35.8	22.2	.....	.....	35.8	22.2
Oldham	115.7	71.7	.....	.....	115.7	71.7
Potter	47	29.1	.....	.....	47	29.1

TABLE 1.—RIVER DISTANCES, BY COUNTY, FOR OCCUPIED AND UNOCCUPIED PROPOSED CRITICAL HABITAT FOR THE ARKANSAS RIVER SHINER—Continued

[Information derived from USGS National Atlas 1:2,000,000 scale hydrography data sets]

County	Occupied		Unoccupied		Total	
	Kilometers	Miles	Kilometers	Miles	Kilometers	Miles
Subtotal	198.5	123.0	.....	.....	198.5	123.0
Total	1,686.8	1,045.9	710.7	440.6	2,399.3	1,487.6

*NOTE: Totals and subtotals are higher for Oklahoma than the actual lengths proposed as critical habitat because, where the river forms a county boundary, that length is included in the table more than once.

For each stream reach proposed for designation, the up- and downstream boundaries are described below. The distances below are approximate due to the meandering and dynamic nature of the proposed river reaches. Uncertainty on upstream and downstream distributional limits of some Arkansas River shiner populations may result in small areas of occupied habitat being excluded from the designation. Similarly, the need to identify sufficient reference points that define the specific limits of the designation also may result in small areas of occupied habitat being excluded from the designation. Finally, as described previously, this critical habitat proposal is focused on mainstem rivers, so some smaller tributaries that may at least seasonally support Arkansas River shiner are not included in this proposal.

In some instances, areas outside of critical habitat that contain one or more of the primary constituent elements may still be important to the conservation of the Arkansas River shiner even if they are not designated as critical habitat. These areas may be of value in maintaining ecosystem integrity and supporting other organisms indirectly contributing to recovery of the species. Additionally, these areas may have those missing elements restored in the future. We have decided that including these areas in the critical habitat designation it is not essential to the conservation of the species. However, we anticipate that these areas can be adequately protected under the Act through section 7 consultation, the section 9 prohibition against taking listed species, and the section 10 habitat conservation planning process, and through other appropriate State and Federal statutes and regulations.

We propose the following areas as critical habitat for the Arkansas River Basin population of the Arkansas River shiner (see the Regulation Promulgation section of this rule for exact descriptions of boundaries).

1. Canadian/South Canadian River, NM, TX, and OK. The Canadian/South Canadian River from near Ute Dam in NM to the upper reaches of Eufaula Reservoir in OK, except for those areas rendered unsuitable for Arkansas River shiner by Meredith Reservoir in TX, is currently occupied by the Arkansas River shiner. These are the largest, perhaps only, remaining viable aggregations of Arkansas River shiner, and are considered to represent the ''core'' of what remains of the species. Smaller tributary streams, with the exception of Revuelto Creek in NM and small sections of the tributaries near their confluence, which may be seasonally occupied, are believed to be currently unoccupied by the Arkansas River shiner.

a. Canadian River, Quay County, NM, and Oldham and Potter Counties, TX—215 km (134 mi) of river extending from U.S. Highway 54 bridge near Logan, NM, downstream to confluence with Coetas Creek, TX. Seepage from Ute Reservoir, inflow from Revuelto Creek, and several springs help sustain perennial flow in most years. There are occasional periods of no flow, and low flows in the lower section were historically maintained by effluent from the Amarillo, TX, wastewater treatment plant. This segment of the Canadian River, despite flows having been modified by Conchas and Ute reservoirs, still supports a largely intact plains river fish fauna. Arkansas River shiners still occur in portions of the 3.2 km (2 mi) reach between the U.S. Highway 54 bridge and Ute Dam, above the reach proposed for designation. Upstream of Ute Reservoir, the Canadian River was substantially modified following the construction of Conchas Reservoir and likely provides little suitable habitat. A small portion of Arkansas River shiner historical range occurs upstream of Conchas Reservoir, but the suitability of that reach for Arkansas River shiner is unknown. No extant aggregations of Arkansas River shiner are known from that reach.

b. Canadian/South Canadian River, Hemphill County, TX, and Blaine, Caddo, Canadian, Cleveland, Custer, Dewey, Ellis, Grady, Hughes, McClain, McIntosh, Pittsburg, Pontotoc, Pottawatomie, Roger Mills, and Seminole Counties, OK—593 km (368 mi) of river extending from the U.S. Highway 60/83 bridge near Canadian, TX, downstream to the Indian Nation Turnpike bridge northwest of McAlester, OK. This segment of the Canadian/South Canadian River is the longest unfragmented reach in the Arkansas River basin that still supports the Arkansas River shiner. Here, Arkansas River shiner range from rare to common, with the species becoming more abundant in a downstream direction. The Canadian River upstream of the community of Canadian, TX, to Sanford Dam at Lake Meredith, supported Arkansas River shiner prior to the construction of Lake Meredith. However, habitat in this segment is degraded and generally unsuitable. Some aggregations of Arkansas River shiner may still persist upstream of Canadian, TX, in extremely small numbers. Altered flow regimes will continue to affect habitat quality in this reach.

Aggregations of Arkansas River shiner also persist in the 49 km (30 mi) section of the South Canadian River from the Indian Nation Turnpike bridge downstream to the upper limits of Eufaula Reservoir. However, the downstream distributional limit of these populations frequently fluctuates. Management of water surface elevations in Eufaula Reservoir for flood control and the resultant backwater effects routinely alter stream morphology at the downstream extent of the population. Under elevated surface water conditions, the lower reaches of this segment are degraded or may be entirely unsuitable for Arkansas River shiner.

2. Beaver/North Canadian River, Beaver, Ellis, Harper, Major, Texas, and Woodward Counties, OK—259 km (161 mi) of river extending from Optima Dam in Texas County, OK, downstream to U.S. Highway 60/281 bridge in Major County, OK. Almost the entire Beaver/North Canadian River mainstem and at

least one of the major tributaries (Deep Fork River) in OK was historically known to support Arkansas River shiner aggregations. A small population may still persist between Optima Dam and the upper reaches of Canton Reservoir, based on the collection of four individuals since 1990. At present, habitat in large areas of the drainage are degraded or unsuitable, either because of reservoirs, reduced stream flow, or water quality impairment. The segment between Optima Dam and the upper reaches of Canton Reservoir offers the best opportunity for restoration of the Arkansas River shiner in the Beaver/North Canadian River. Habitat in this reach appears suitable although detailed studies have not yet been conducted. Recovery activities will include augmenting existing aggregations of the Arkansas River shiner and reestablishing additional populations in this system. Above Optima Reservoir, pumping from the High Plains aquifer has considerably reduced streamflow in the Beaver River (Luckey and Becker 1998), and the habitat is no longer suitable for Arkansas River shiner.

3. Cimarron River, Clark, Comanche, Meade, and Seward Counties, KS, and Beaver, Harper, Woods, and Woodward, Counties, OK—215 km (134 mi) of river extending from U.S. Highway 54 bridge in Seward County, KS, downstream to U.S. Highway 281 bridge in Woods County, OK. Historically, almost the entire Cimarron River mainstem and several of the major tributaries were inhabited by the Arkansas River shiner, including the type locality for the species (the area from which the specimens that were used to first describe the species were taken). A small population of Arkansas River shiner could still persist in the Cimarron River in OK and KS, based on the collection of nine individuals since 1985. Arkansas River shiners were last reported from the Cimarron River in 1990. At present, habitat appears suitable throughout most of the system, but detailed studies have not yet been conducted. Recovery activities for Arkansas River shiner will likely include augmenting existing populations and reestablishing additional aggregations in this system or the Arkansas River in KS. Lack of adequate streamflow in both systems and the presence of Red River shiners in the Cimarron River will hinder recovery efforts. The introduction of the Red River shiner, in combination with habitat loss and degradation, was responsible for the diminished distribution and abundance of the Arkansas River shiner in the Cimarron River. The Red River shiner, a small minnow endemic to the Red River, was first recorded from the Cimarron River in Kansas in 1972 (Cross *et al.* 1985) and from the Cimarron River in Oklahoma in 1976 (Marshall 1978). Since that time, the non indigenous Red River shiner has essentially replaced the Arkansas River shiner in this system.

4. Arkansas River, Barton, Cowley, Edwards, Finney, Ford, Gray, Hamilton, Kearney, Kiowa, Pawnee, Reno, Rice, Sedgwick, and Sumner Counties, KS—584 km (363 mi) of river extending from Kansas State Highway 27 bridge in Hamilton County, KS, downstream to KS/OK State line in Cowley County, KS. The Arkansas River in Kansas contains a significant portion of the species' historical range and was not known to support Arkansas River shiner until recently. The Arkansas River shiner historically inhabited the entire mainstem of the Arkansas River, but had begun to decline by 1952 due to the construction of John Martin Reservoir 10 years earlier on the Arkansas River in Bent County, Colorado (Cross *et al.* 1985).

Typically, releases from John Martin Reservoir and irrigation return flows from eastern Colorado maintain streamflow in the Arkansas River as far east as Syracuse, KS (Kansas Geologic Survey 1996). Between Syracuse and Garden City, KS, the river often ceases to flow due to surface and groundwater withdrawals. Surface flow then resumes near Great Bend, KS. At present, insufficient streamflow and water quality degradation renders much of the Arkansas River west of Great Bend unsuitable for Arkansas River shiner. However, in early 1995, the U.S. Supreme Court ruled that Colorado had violated the Arkansas River Compact by depleting usable flows of the Arkansas River in Kansas (*Kansas* v *Colorado,* No. 105, Orig., US Supreme Ct, 1995). If Colorado provides additional water to Kansas, habitat conditions in the Arkansas River west of Great Bend could improve.

Recovery for Arkansas River shiner will include reestablishing additional populations in this system or the Cimarron River. Downstream of the KS/OK State line, large areas of the basin are unsuitable for Arkansas River shiner, either because of reservoirs (*i.e.,* Kaw and Keystone) and the associated streamflow alterations, or because of stream channel alteration for navigation and are not included in the proposed designation. Even if modifications of releases from these reservoirs become feasible in the future, we suspect that the reaches below Kaw and Keystone reservoirs would never provide suitable habitat. The distance between Kaw Dam and the upper reaches of Keystone Reservoir is only 139 river km (86 river mi), and the distance between Keystone Dam and the McClellan-Kerr Navigation System is only about 130 river km (81 river mi). These distances are likely insufficient to sustain reproducing populations (see ''Primary Constituent Elements'' below).

The 1998 listing rule for the Arkansas River shiner estimated that at least 3,900 km (2,450 mi) of habitat within the species' range was occupied historically. This proposal involves approximately half that amount. However, the estimate for the listing rule was likely conservative, in that it did not take into account probable occupancy of smaller tributaries in the Arkansas River Basin. Considering the amount of historically occupied habitat that occurred in the smaller tributaries, the amount being considered for critical habitat designation is much less than one-half. Although amount of habitat proposed for designation is less than one-half the historical range of the species, we believe that conservation of the Arkansas River shiner within the proposed areas can secure the long-term survival and recovery of this species.

Lateral Extent of Critical Habitat

This proposal takes into account the naturally dynamic nature of riverine systems and recognizes that floodplains are an integral part of the stream ecosystem. Habitat quality within the mainstem river channels in the historical range of the Arkansas River shiner is intrinsically related to the character of the floodplain and the associated tributaries, side channels, and backwater habitats that contribute to the key habitat features (*e.g.,* substrate, water quality, and water quantity) in these reaches. Among other things, the floodplain provides space for natural flooding patterns and latitude for necessary natural channel adjustments to maintain appropriate channel morphology and geometry. A relatively intact riparian zone, along with periodic flooding in a relatively natural pattern, are important in maintaining the stream conditions necessary for long-term survival and recovery of the Arkansas River shiner.

Human activities that occur outside the river channel can have a demonstrable effect on physical and biological features of aquatic habitats. However, not all of the activities that occur within a floodplain will have an adverse impact on the Arkansas River shiner or its habitat. Thus, in determining the lateral extent of critical habitat along riverine systems, we must

consider the definition of critical habitat under the Act. That is, critical habitat must contain the elements essential to a species' conservation and must be in need of special management considerations or protection. We see no need for special management considerations or protection for the entire floodplain, and we are not proposing to designate the whole floodplain as critical habitat. However, conservation of the river channel alone is not sufficient to ensure the survival and recovery of the Arkansas River shiner. We believe the riparian corridors adjacent to the river channel provide a reasonable lateral extent for critical habitat designation.

Riparian areas are seasonally flooded habitats (*i.e.,* wetlands) that are major contributors to a variety of vital functions within the associated stream channel (Federal Interagency Stream Restoration Working Group 1998, Brinson *et al.* 1981). They are responsible for energy and nutrient cycling, filtering runoff, absorbing and gradually releasing floodwaters, recharging groundwater, maintaining streamflows, protecting stream banks from erosion, and providing shade and cover for fish and other aquatic species. Healthy riparian corridors help ensure water courses maintain the primary constituent elements essential to stream fishes, including the Arkansas River shiner.

The lateral extent (width) of riparian corridors fluctuates considerably between a stream's headwaters and its mouth. The appropriate width for riparian buffer strips has been the subject of several studies (Castelle *et al.* 1994). Most Federal and State agencies generally consider a zone 23–46 meters (m) (75.4–150.9 feet (ft)) wide on each side of a stream to be adequate (NRCS 1998, Moring *et al.* 1993, Lynch *et al.* 1985), although buffer widths as wide as 152 m (500 ft) have been recommended for achieving flood attenuation benefits (Corps 1999). In most instances, however, riparian buffer zones are primarily intended to reduce detrimental impacts to the stream from sources outside the river channel. Consequently, a buffer width of 23–46 m (75.4–150.9 ft) may be inadequate to preserve the natural processes that provide Arkansas River shiner constituent elements.

Generally, we consider a lateral distance of 91.4 m (300 ft) on each side of the stream beyond the bankfull width to be an appropriate riparian corridor width for the preservation of Arkansas River shiner constituent elements. The bankfull width is the width of the stream or river at bankfull discharge, *i.e.,* the flow at which water begins to leave the channel and move into the floodplain (Rosgen 1996); this activity generally occurs every 1 to 2 years (Leopold *et al.* 1992). Bankfull discharge, while a function of the size of the stream, is a fairly consistent feature related to the formation, maintenance, and dimensions of the stream channel (Rosgen 1996).

Primary Constituent Elements

In identifying areas as critical habitat, 50 CFR 424.12 provides that we consider those physical and biological features that are essential to conservation of the species and that may require special management considerations or protection. These physical and biological features, as outlined in 50 CFR 424.12, include, but are not limited to, the following:

Space for individual and population growth, and for normal behavior;

Food, water, or other nutritional or physiological requirements;

Cover or shelter;

Sites for breeding, reproduction, or rearing of offspring; and

Habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

The important habitat features that provide for the physiological, behavioral, and ecological requirements of the Arkansas River shiner include adequate spawning flows; habitat for food organisms; appropriate water quality; a natural flow regime; rearing and juvenile habitat appropriate for growth and development to adulthood; and flows sufficient to allow Arkansas River shiner to recolonize upstream habitats. Given the large geographic range the species historically occupied, and the diverse habitats used by the various life-history stages, describing specific values or conditions for each of these habitat features is not always possible . However, the following discussion summarizes the biological requirements of the Arkansas River shiner relevant to identifying the primary constituent elements of its critical habitat.

The Arkansas River shiner historically inhabited the main channels of wide, shallow, sandy-bottomed rivers and larger streams of the Arkansas River basin (Gilbert 1980). Adults are uncommon in quiet pools or backwaters lacking streamflow, and almost never occurred in habitats having deep water and bottoms of mud or stone (Cross 1967). Cross (1967) believed that adults prefer to orient into the current on the ''lee'' sides of large transverse sand ridges and prey upon food organisms washed downstream in the current.

The Arkansas River shiner is believed to be a generalized forager and feeds upon both items suspended in the water column and items lying on the substrate (Jimenez 1999, Bonner *et al.* 1997). In the South Canadian River of central OK, Polivka and Matthews (1997) found that gut contents were dominated by sand/sediment and detritus (decaying organic material) with invertebrate prey being an incidental component of the diet. In the Canadian River of NM and TX, the diet of Arkansas River shiner was dominated by detritus, invertebrates, grass seeds, and sand and silt (Jimenez 1999). Invertebrates were the most important food item, followed by detrital material.

Terrestrial and semiaquatic invertebrates were consumed at higher levels than were aquatic invertebrates (Jimenez 1999). With the exception of the winter season, when larval flies were consumed much more frequently than other aquatic invertebrates, no particular invertebrate taxa dominated the diet (Bonner *et al.* 1997). Fly larvae, copepods, immature mayflies, insect eggs, and seeds were the dominant items in the diet of the nonnative population of the Arkansas River shiner inhabiting the Pecos River in NM (Keith Gido, University of Oklahoma, *in litt.* 1997).

Most plains streams are highly variable environments. Water temperatures, flow regimes, and overall physicochemical conditions (*e.g.*, quantity of dissolved oxygen) typically fluctuate so drastically that fishes native to these systems often exhibit life-history strategies and microhabitat preferences that enable them to cope with these conditions. Matthews (1987) classified several species of fishes, including the Arkansas River shiner, based on their tolerance for adverse conditions and selectivity for physicochemical gradients. The Arkansas River shiner was described as having a high thermal and oxygen tolerance, indicating a high capacity to tolerate elevated temperatures and low dissolved oxygen concentrations (Matthews 1987). Observations from the Canadian River in NM and TX revealed that dissolved oxygen concentrations, conductivity, and pH rarely influenced habitat selection by the Arkansas River shiner (Wilde *et al.* 2000). Arkansas River shiners were collected over a wide range of conditions—water temperatures from 0.4 to 36.8 °Celsius (32.7 to 98.2 °Fahrenheit), dissolved oxygen from 3.4 to 16.3 parts per million, conductivity from 0.7 to 14.4 millisiemens per centimeter, and pH from 5.6 to 9.0.

In the South Canadian River of central OK, Polivka and Matthews (1997) found that Arkansas River shiner exhibited only a weak relationship between the environmental variables they measured and the occurrence of the species within the stream channel. Water depth, current, dissolved oxygen, and sand ridge and midchannel habitats were the environmental variables most strongly associated with the distribution of Arkansas River shiner within the channel. Similarly, microhabitat selection by Arkansas River shiner in the Canadian River of NM and TX was influenced by water depth, current velocity, and, to a lesser extent, water temperature (Wilde *et al.* 2000). Arkansas River shiners generally occurred at mean water depths between 17 and 21 centimeters (6.6–8.3 in.) and current velocities between 30 and 42 centimeters (11.7 and 16.4 in.) per second. Juvenile Arkansas River shiner associated most strongly with current, conductivity (total dissolved solids), and backwater and island habitat types (Polivka and Matthews 1997).

Wilde *et al.* (2000) found no obvious selection for or avoidance of any particular habitat type (*i.e.,* main channel, side channel, backwaters, and pools) by Arkansas River shiner. Arkansas River shiners did tend to select side channels and backwaters slightly more than expected based on the availability of these habitats (Wilde *et al.* 2000). Likewise, they appeared to make no obvious selection for or avoidance of any particular substrate type. Substrates in the Canadian River in NM and TX were predominantly sand; however, Arkansas River shiner were observed to occur over silt slightly more than expected based on the availability of this substrate (Wilde *et al.* 2000).

Successful reproduction by Arkansas River shiner appears to be strongly correlated with streamflow. Moore (1944) believed the Arkansas River shiner spawned in July, usually coinciding with elevated flows following heavy rains associated with summertime thunderstorms. Bestgen *et al.* (1989) found that spawning in the nonnative population of Arkansas River shiner in the Pecos River of New Mexico generally occurred in conjunction with releases from Sumner Reservoir. However, recent studies by Polivka and Matthews (1997) and Wilde *et al.* (2000) neither confirmed nor rejected the hypothesis that elevated streamflow triggered spawning in the Arkansas River shiner.

Arkansas River shiners are open-water, broadcast spawners that release their eggs and sperm over an unprepared substrate (Platania and Altenbach 1998, Johnston 1999). Examination of Arkansas River shiner gonadal development between 1996 and 1998 in the Canadian River of NM and TX demonstrated that the species undergoes multiple, asynchronous (not happening at the same time) spawns in a single season (Wilde *et al.* 2000). The Arkansas River shiner appears to be in peak reproductive condition throughout the months of May, June, and July (Wilde *et al.* 2000, Polivka and Matthews 1997); however, spawning may occur as early as April and as late as September. Arkansas River shiners may, on occasion, spawn in standing waters (Wilde *et al.* 2000), but it is unlikely that such events are successful.

Both Moore (1944) and Platania and Altenbach (1998) described egg behavior in the Arkansas River shiner. The fertilized eggs are nonadhesive and semibuoyant. Platania and Altenbach (1998) found that spawned eggs settled to the bottom of the aquaria where they quickly absorbed water and expanded. Upon absorbing water, the eggs became more buoyant, rose with the water current, and remained in suspension. The eggs would sink when water current was not maintained in the aquaria. This led Platania and Altenbach (1998) to conclude that the Arkansas River shiner and other plains fishes likely spawn in the upper to mid-water column during elevated flows. Spawning under these conditions would allow the eggs to remain suspended during the 10- to 30-minute period the eggs were non-buoyant. Once the egg became buoyant, it would remain suspended in the water column as long as current was present.

In the absence of sufficient streamflows, the eggs would likely settle to the channel bottom, where silt and shifting substrates would smother the eggs, hindering oxygen uptake and causing mortality of the embryos. Spawning during elevated flows appears to be an adaptation that likely increases survival of the embryo and facilitates dispersal of the young. Assuming a conservative drift rate of 3 km/hour, Platania and Altenbach (1998) estimated that the fertilized eggs could be transported 72–144 km (45–89 mi) before hatching. Developing larvae would then be transported an additional 216 km (134 mi). Bonner and Wilde (2000) speculate that 218 km (135 mi) may be the minimum length of unimpounded river that allows for the successful completion of the life-history for the Arkansas River shiner, based on their observations in the Canadian River in New Mexico and Texas.

Rapid hatching and development of the young is likely another adaptation in plains fishes that enhances survival in the harsh environments of plains streams. Arkansas River shiner eggs hatch in 24–48 hours after spawning, depending upon water temperature (Moore 1944, Platania and Altenbach 1998). The larvae are capable of swimming within 3–4 days; they then seek out low-velocity habitats, such as backwater pools and quiet water at the mouths of tributaries where food is more abundant (Moore 1944).

Evidence from Wilde *et al.* (2000) indirectly supports the speculation by Cross *et al.* (1985) that the Arkansas River shiner initiate an upstream spawning migration. Whether this represents a true spawning migration or just a general tendency in these fish to orient into the current and move upstream, perhaps in search of more favorable environmental conditions, is unknown (Wilde *et al.* 2000). Regardless, strong evidence suggested the presence of a directed, upstream movement by the Arkansas River shiner over the course of a year.

As previously discussed, introductions of nonindigenous species can have a significant adverse impact on Arkansas River shiner populations under certain conditions. The morphological characteristics, population size, and ecological preferences exhibited by the Red River shiner, a species endemic to the Red River drainage, suggest that it competes with the Arkansas River shiner for food and other essential life requisites (Cross *et al.* 1983, Felley and Cothran 1981). Since its introduction, the Red River shiner has colonized much of the Cimarron River and frequently may be a dominant component of the fish community (Cross *et al.* 1983, Felley and Cothran 1981). The intentional or unintentional release of Red River shiners, or other potential competitors, into other reaches of the Arkansas River drainage by anglers or the commercial bait industry is a potentially serious threat that could drastically alter habitat quality in these reaches.

We determined the primary constituent elements for Arkansas River shiner from studies on their habitat requirements and population biology, as outlined above. These primary constituent elements are the following:

1. A natural, unregulated hydrologic regime complete with episodes of flood and drought or, if flows are modified or regulated, a hydrologic regime characterized by the duration, magnitude, and frequency of flow events capable of forming and maintaining channel and instream

habitat necessary for particular Arkansas River shiner life-stages in appropriate seasons;

2. A complex, braided channel with pool, riffle (shallow area in a streambed causing ripples), run, and backwater components that provide a suitable variety of depths and current velocities in appropriate seasons;

3. A suitable unimpounded stretch of flowing water of sufficient length to allow hatching and development of the larvae;

4. Substrates of predominantly sand, with some patches of silt, gravel, and cobble;

5. Water quality characterized by low concentrations of contaminants and natural, daily and seasonally variable temperature, turbidity, conductivity, dissolved oxygen, and pH;

6. Abundant terrestrial, semiaquatic, and aquatic invertebrate food base; and

7. Few or no predatory or competitive nonnative species present.

The areas we are proposing for designation as critical habitat for Arkansas River shiner provide the above primary constituent elements or will be capable, with restoration, of providing them. All of the proposed areas require special management considerations or protection to ensure their contribution to the species' recovery.

Land Ownership

The vast majority (about 98 percent) of proposed critical habitat is in private ownership, with relatively small, scattered tracts of State, and Federal lands. Private lands are primarily used for grazing and agriculture, but also include towns, small-lot residences, and industrial areas. A general description of land ownership in each complex follows:

1a. Canadian River—This reach is predominantly in private ownership. The State of New Mexico owns scattered tracts. The reach in Texas is in private ownership, except for a small segment that is owned by the National Park Service as part of the Lake Meredith National Recreation Area.

1b. Canadian/South Canadian River—This reach is predominantly in private ownership, with limited areas of State and tribal ownership. The Texas Parks and Wildlife Department owns a small segment downstream of the town of Canadian, TX (Gene Howe Wildlife Management Area (WMA)). The Oklahoma Department of Wildlife Conservation owns a small section near Roll, OK (Packsaddle WMA). Small tracts of tribal lands are near Oklahoma City.

2. Beaver/North Canadian River—The ownership is predominantly private, with limited areas of State-owned lands. The Oklahoma Department of Wildlife Conservation owns small sections near Beaver, OK (Beaver River WMA) and near Fort Supply, OK (Cooper WMA). The Oklahoma Department of Parks and Tourism owns a small section near Woodward, OK (Boiling Springs State Park).

3. Cimarron River—Land here is entirely in private ownership.

4. Arkansas River—This area is entirely in private ownership except for a small area near the Kansas/Oklahoma State line owned by the U.S. Army Corps of Engineers (Kaw Wildlife Area). This area is managed by the State of Kansas (Kansas Department of Wildlife and Parks).

Effect of Critical Habitat Designation

Section 7(a) of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local and tribal governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding. Thus, activities on Federal lands that may affect the Arkansas River shiner or its critical habitat, if designated, will require section 7 consultation. Actions on private or State lands receiving funding or requiring a permit from a Federal agency also will be subject to the section 7 consultation process if the action may affect critical habitat. Federal actions not affecting the species or its critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultation.

Federal agencies are required to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat. Regulations implementing these interagency cooperation provisions of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act and regulations at 50 CFR 402.10 require Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or to result in destruction or adverse modification of proposed critical habitat. A section 7 conference on proposed critical habitat results in a report that may provide conservation recommendations to assist the action agency in eliminating or minimizing adverse effects to the proposed critical habitat that may be caused by the proposed agency action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report, if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a conference opinion as to whether the proposed action is likely to destroy or adversely modify proposed critical habitat. This biological opinion is prepared as if critical habitat were designated as final, in accordance with 50 CFR 402.13.

If we subsequently finalize the proposed critical habitat designation, then section 7(a)(2) will require Federal agencies to enter into consultation with us on agency actions that may affect critical habitat. Consultations on agency actions that will likely adversely affect critical habitat will result in issuance of a biological opinion. We may adopt a formal conference report as the biological opinion if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If we find a proposed agency action is likely to destroy or adversely modify the critical habitat, our biological opinion may include reasonable and prudent alternatives to the action that are designed to avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that we believe would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative vary accordingly.

Regulations at 50 CFR 402.16 also require Federal agencies to reinitiate consultation in instances where we have already reviewed an action for its effects on a listed species if critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation if their actions may affect designated critical habitat, or

conferencing with us on actions likely to destroy or adversely modify proposed critical habitat.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat, a description and evaluation of those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. A wide range of Federal activities have the potential to destroy or adversely modify critical habitat for the Arkansas River shiner. These activities may include land and water management actions of Federal agencies (*e.g.*, U.S. Army Corps of Engineers, Natural Resources Conservation Service, Bureau of Reclamation, and the Bureau of Indian Affairs) and related or similar actions of other federally regulated projects (*e.g.*, road and bridge construction activities by the Federal Highway Administration; dredge and fill projects, sand and gravel mining, and bank stabilization activities conducted or authorized by the U.S. Army Corps of Engineers; and, National Pollutant Discharge Elimination System permits authorized by the Environmental Protection Agency). Specifically, activities that may destroy or adversely modify critical habitat are those that alter the primary constituent elements (defined above) to an extent that the value of critical habitat for both the survival and recovery of the Arkansas River shiner is appreciably reduced. Such activities include, but are not limited to:

(1) Significantly and detrimentally altering the minimum flow or the natural flow regime of any of the designated stream segments. Possible actions would include groundwater pumping, impoundment, water diversion, and hydropower generation. We note that such flow reductions that result from actions affecting tributaries of the proposed stream reaches may also destroy or adversely modify critical habitat.

(2) Significantly and detrimentally altering the characteristics of the riparian zone in any of the designated stream segments. Possible actions would include vegetation manipulation, timber harvest, road construction and maintenance, prescribed fire, livestock grazing, off-road vehicle use, powerline or pipeline construction and repair, mining, and urban and suburban development.

(3) Significantly and detrimentally altering the channel morphology of any of the stream segments listed above. Possible actions would include channelization, impoundment, road and bridge construction, deprivation of substrate source, destruction and alteration of riparian vegetation, reduction of available floodplain, removal of gravel or floodplain terrace materials, reduction in stream flow, and excessive sedimentation from mining, livestock grazing, road construction, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances.

(4) Significantly and detrimentally altering the water chemistry in any of the designated stream segments. Possible actions would include release of chemical or biological pollutants into the surface water or connected groundwater at a point source or by dispersed release (non-point).

(5) Introducing, spreading, or augmenting nonnative aquatic species in any of the designated stream segments. Possible actions would include fish stocking for sport, aesthetics, biological control, or other purposes; use of live bait fish; aquaculture; construction and operation of canals; and interbasin water transfers.

Not all of the identified activities are necessarily of current concern within the Arkansas River basin; however, they do indicate the potential types of activities that will require consultation in the future and, therefore, that may be affected by critical habitat designation. We do not expect that designation of critical habitat in areas occupied by the Arkansas River shiner will result in a regulatory burden above that already in place, due to the presence of the listed species. However, areas designated as critical habitat that are not currently occupied by the species may require protections similar to those provided to occupied areas under past consultations.

As discussed previously, Federal actions that are found likely to destroy or adversely modify critical habitat may often be modified, through development of reasonable and prudent alternatives, in ways that will remove the likelihood of destruction or adverse modification of critical habitat. Such project modifications may include such things as adjustment in timing of projects to avoid sensitive periods for the species and its habitat; replanting of riparian vegetation; minimization of work and vehicle use in the wetted channel; restriction of riparian and upland vegetation clearing; fencing to exclude livestock and limit recreational use; use of alternative livestock management techniques; avoidance of pollution; minimization of ground disturbance in the floodplain; use of alternative material sources; storage of equipment and staging of operations outside the floodplain; use of sediment barriers; access restrictions; and use of best management practices to minimize erosion.

If you have questions regarding whether specific activities will likely constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Oklahoma Ecological Services Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Division of Endangered Species, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone 505–248–6920; facsimile 505–248–6788).

We are in the process of developing a recovery plan for the Arkansas River Basin population of the Arkansas River shiner. The recovery plan, when finalized, will provide recommendations on recovering this species, including recommendations on management of its critical habitat. Further, should the recovery plan recommend adding or deleting areas as critical habitat, we will consider whether a future revision of critical habitat is appropriate.

Economic Analysis

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. The economic impacts to be considered in a critical habitat designation are the incremental effects of the designation over and above the economic impacts attributable to listing of the species. In general, these incremental impacts are more likely to result from management activities in areas outside the present distribution of the listed species.

We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying those areas as critical habitat; however, we cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species. A draft economic analysis will be available for public review and comment (see **ADDRESSES** section). We will utilize the economic analysis, and take into consideration all comments and information submitted during the public hearing and comment period, to determine whether areas should be excluded from the final critical habitat designation.

American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act

In accordance with the Presidential Memorandum of April 29, 1994, we believe that, to the maximum extent possible, tribes should be the governmental entities to manage their lands and tribal trust resources. To this end, we support tribal measures that preclude the need for conservation regulations, and we provide technical assistance to Indian tribes who wish assistance in developing and expanding tribal programs for the management of healthy ecosystems so that Federal conservation regulations, such as designation of critical habitat, on tribal lands are unnecessary.

The Presidential Memorandum of April 29, 1994, also requires us to consult with the tribes on matters that affect them, and section 4(b)(2) of the Act requires us to gather information regarding the designation of critical habitat and the effects thereof from all relevant sources, including the tribes. Recognizing a government-to-government relationship with tribes and our Federal trust responsibility, we consulted to the extent possible with the Indian tribes having tribal trust resources, tribally owned fee lands, or tribal rights that might be affected by the designation of critical habitat.

In our deliberations over this critical habitat proposal, we identified two categories of possible effects to tribes or tribal resources. These include: (1) Effects resulting from designation of critical habitat on Tribal lands; and (2) effects on tribal resources, such as water deliveries, resulting from designation of critical habitat on nontribal lands. We identified tribal lands belonging to the Choctaw and Chickasaw Nations as containing stream reaches that may be appropriate for designation of critical habitat. Additionally, several tribes may have lands located downstream from proposed critical habitat.

1. Designation of Critical Habitat on Tribal Lands

We met with representatives of the Cherokee, Chickasaw, Creek, and Seminole Nations on April 6, 2000, to discuss the proposed designation. The Chickasaw and Choctaw Nations are the two tribes that have habitat for Arkansas River shiner on their lands. Given our obligations under the Presidential Memorandum, we are not proposing critical habitat on Tribal land. However, as provided under section 4(b)(2) of the Act, we are soliciting information during the comment period as to whether these areas should be designated as critical habitat and will be continuing our discussions with the tribes to determine whether voluntary measures implemented by the tribes are adequate to achieve conservation of the Arkansas River shiner on tribal lands. We will consider this information in determining which, if any, tribal land should be included in the final designation as critical habitat for the Arkansas River shiner.

2. Effects on Tribal Trust Resources From Critical Habitat Designation on Nontribal Lands

We do not anticipate that proposal of critical habitat on nontribal lands will result in any impact on tribal trust resources or the exercise of tribal rights. However, as stated above, some tribes may have lands located downstream from proposed critical habitat for the Arkansas River shiner.

In complying with our tribal trust responsibilities, we must communicate with all tribes potentially affected by the designation. Therefore, we are soliciting information during the comment period on potential effects to tribes or tribal resources that may result from critical habitat designation.

Public Comments Solicited

We intend for any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we are soliciting comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of excluding areas will outweigh the benefits of including areas as critical habitat;

(2) Specific information on the abundance of Arkansas River shiner and the amount and distribution of its habitat;

(3) Areas that are essential to the conservation of the species and that may require special management considerations or protection and why;

(4) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and

(6) Economic and other values associated with designating critical habitat for the Arkansas River shiner, such as those derived from nonconsumptive uses (*e.g.*, hiking, camping, birding, enhanced watershed protection, increased soil retention, ''existence values,'' and reductions in administrative costs).

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following—(1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand?

Our practice is to make comments that we receive on this rulemaking, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, including the individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule immediately following publication in the **Federal Register** to these peer reviewers. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding

the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Given the large geographic extent covered by this proposal, the high likelihood of multiple requests, and the need to publish a final determination by March 14, 2001, we have scheduled three public hearings (see **DATES** and **ADDRESSES** sections).

Written comments submitted during the comment period receive equal consideration with those comments presented at a public hearing.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action and has been reviewed by the Office of Management and Budget (OMB). We will prepare a draft economic analysis of this proposed action to determine the economic consequences of designating the specific areas as critical habitat. The draft economic analysis will be available for public review and comment.

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit analysis is not required for purposes of Executive Order 12866. The Arkansas River shiner was listed as a threatened species in 1998. Currently, we have not conducted any formal section 7 consultation with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the Arkansas River shiner.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 2 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as ''jeopardy'' to the species under the Act. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons who do not have a Federal ''sponsorship'' of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning ''take'' of the species).

Designation of unoccupied areas as critical habitat may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. We will evaluate this impact through our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule).

(b) This rule will not create inconsistencies with other agencies' actions. Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the Arkansas River shiner since its listing in 1998. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist in occupied areas of proposed critical habitat. Additional restrictions may be imposed in unoccupied areas proposed as critical habitat; we will evaluate this possibility through our economic analysis under section 4 of the Act. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) The proposed rule, if made final, will not significantly impact entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects in areas of occupied habitat. However, we will review the effects of this proposed action on Federal agencies or non-Federal persons that receive Federal authorization or funding in unoccupied critical habitat areas.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

TABLE 2.—IMPACTS OF DESIGNATING CRITICAL HABITAT FOR ARKANSAS RIVER SHINER

Categories of activities	Activities potentially affected by the designation of critical habitat in areas occupied by the Species (in addition to those affected from listing the species)	Activities potentially affected by the designation of critical habitat in unoccupied areas
Federal activities potentially affected [1].	None	Activities such as those affecting waters of the United States by the U.S. Army Corps of Engineers under section 404 or by the Environmental Protection Agency under section 402 of the Clean Water Act; natural gas/petroleum pipeline and hydropower development/licensing by the Federal Energy Regulatory Commission; construction of communication sites licensed by the Federal Communications Commission; road construction and maintenance, vegetation manipulation, right-of-way designation, regulation of agricultural activities, and other activities funded by any Federal agency.

TABLE 2.—IMPACTS OF DESIGNATING CRITICAL HABITAT FOR ARKANSAS RIVER SHINER—Continued

Categories of activities	Activities potentially affected by the designation of critical habitat in areas occupied by the Species (in addition to those affected from listing the species)	Activities potentially affected by the designation of critical habitat in unoccupied areas
Private or other non-Federal Activities Potentially Affected [2].	None	Activities that require a Federal action (permit, authorization, or funding) and that involve such activities as removing or destroying Arkansas River shiner habitat (as defined in the primary constituent elements discussion), whether by mechanical, chemical, or other means (*e.g.,* channelization, flood control, water diversions, etc.), including indirect effects (*e.g.,* edge effects, invasion of exotic plants or animals, or fragmentation); and that appreciably decrease habitat value or quality.

[1] Activities initiated by a Federal agency.
[2] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.

In the draft economic analysis, we will determine if designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas of occupied critical habitat. However, for areas of unoccupied habitat, we will review the effects of this proposed action on small entities.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In our draft economic analysis, we will determine whether designation of critical habitat will cause: (a) Any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects on these activities in areas of critical habitat occupied by the species. However, we will review the effects of this proposed action as there may be additional effects in areas of unoccupied habitat.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act:

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs involving Federal funds, permits, or other authorized activities must ensure that their actions will not destroy or adversely modify critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated in areas of occupied proposed critical habitat. However, we will review the effects of this proposed action as there may be additional effects in areas of unoccupied habitat.

b. This rule will not produce a Federal mandate on State, local or tribal governments or the private sector of more than $100 million or greater in any year, *i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This proposed rule, if made final, will not ''take'' private property. The designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the Arkansas River shiner. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the Arkansas River shiner.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. The designation of critical habitat in areas currently occupied by the Arkansas River basin population of the Arkansas River shiner imposes no additional restrictions to those currently in place, and therefore has little incremental impact on State and local governments and their activities.

In keeping with Department of the Interior policy, we requested information from and coordinated development of this critical habitat designation with appropriate State resource agencies in Kansas, New Mexico, Oklahoma, and Texas. We also utilized information on critical habitat submitted by the States during the listing of the Arkansas River shiner. We anticipate that the affected States will have representatives on our recovery team for this species. Consequently, we will continue to coordinate this and any future designation of critical habitat for the Arkansas River shiner with the appropriate State agencies.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor 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. The Office of the Solicitor will review the final determination for this proposal. We will make every effort to ensure that the final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

Our position is that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), *cert. denied* 116 S. Ct. 698 (1996). However, when the range of the species includes States within the Tenth Circuit (the States of CO, KS, NE, NM, OK, UT, and WY) , such as that of the Arkansas River shiner, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we undertake a NEPA analysis for critical habitat designation. Send your requests for copies of the draft environmental assessment for this proposal to the Oklahoma Ecological Services Office or visit our web site (see **ADDRESSES** section).

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Oklahoma Ecological Services Office (see **ADDRESSES** section).

Author

The primary author of this notice is Ken Collins (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h), by revising the entry for ''shiner, Arkansas River'' under ''FISHES'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*		*	*	*	*	*
FISHES							
*	*		*	*	*	*	*
Shiner, Arkansas River.	*Notropis girardi.*	U.S.A. (AR, KS, NM, OK, TX).	Arkansas River Basin (AR, KS, NM, OK, TX).	T	653	§ 17.95(e)	NA
*	*		*	*	*	*	*

3. Amend section 17.95(e) by adding critical habitat for the Arkansas River shiner *(Notropis girardi)* in the same alphabetical order as this species occurs in 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) Fishes.

* * * * *

Arkansas River Shiner *(Notropis Girardi)*

1. Critical habitat is depicted for Barton, Clark, Comanche, Cowley, Edwards, Finney, Ford, Gray, Hamilton, Kearny, Kiowa, Meade, Pawnee, Reno, Rice, Sedgwick, Seward, and Sumner counties, Kansas; Quay County, New Mexico; Beaver, Blaine, Caddo, Canadian, Cleveland, Custer, Dewey, Ellis, Grady, Harper, Hughes, Major, McClain, McIntosh, Pittsburg, Pontotoc, Pottawatomie, Roger Mills, Seminole, Texas, Woods and Woodward counties, Oklahoma; and Hemphill, Oldham, and Potter counties, Texas on the maps and as described below.

2. Critical habitat includes the stream channels within the identified stream reaches indicated on the maps below, and includes a lateral distance of 91.4 m (300 ft) on each side of the stream width at bankfull discharge. Bankfull discharge is the flow at which water begins to leave the channel and move into the floodplain (Rosgen 1996) and generally occurs with a frequency of every 1 to 2 years (Leopold *et al.* 1992).

3. Within these areas, the primary constituent elements include, but are not limited to, those habitat components that are essential for the primary biological needs of foraging, sheltering, and reproduction. These elements include the following—(1) a natural, unregulated hydrologic regime complete with episodes of flood and drought or, if flows are modified or regulated, a hydrologic regime characterized by the duration, magnitude, and frequency of flow events capable of forming and maintaining channel and instream habitat necessary for particular Arkansas River shiner life-stages in appropriate seasons; (2) a complex, braided channel with pool, riffle, run, and backwater components that provide a suitable variety of depths and current velocities in appropriate seasons; (3) a suitable unimpounded stretch of flowing water of sufficient length to allow hatching and development of the larvae; (4) substrates of predominantly sand, with some patches of gravel and cobble; (5) water quality characterized by low concentrations of contaminants and natural, daily and seasonally variable temperature, turbidity, conductivity, dissolved oxygen, and pH; (6) abundant terrestrial, semiaquatic, and aquatic invertebrate food base; and (7) few or no predatory or competitive nonnative species present.

4. Kansas (Sixth Principal Meridian (SPM)), New Mexico (New Mexico Principal Meridian (NMPM)), Oklahoma (Cimarron Meridian (CM) and Indian

Meridian (IM)), and Texas (geographic coordinates): Areas of land and water as follows (physical features were identified using USGS 7.5′ quadrangle maps; river reach distances were derived from digital data obtained from USGS National Atlas data set for river reaches, roads, and county boundaries.

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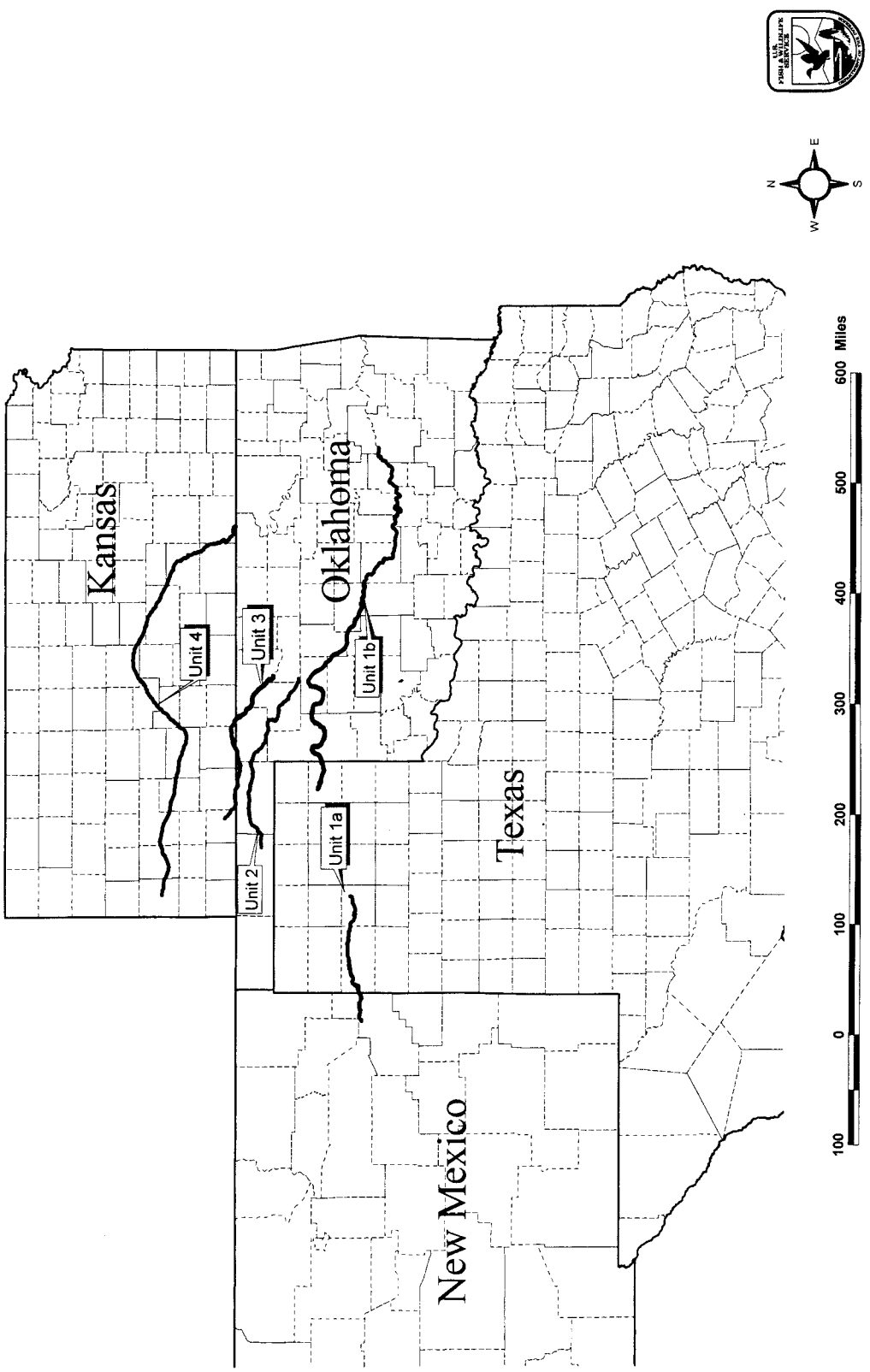


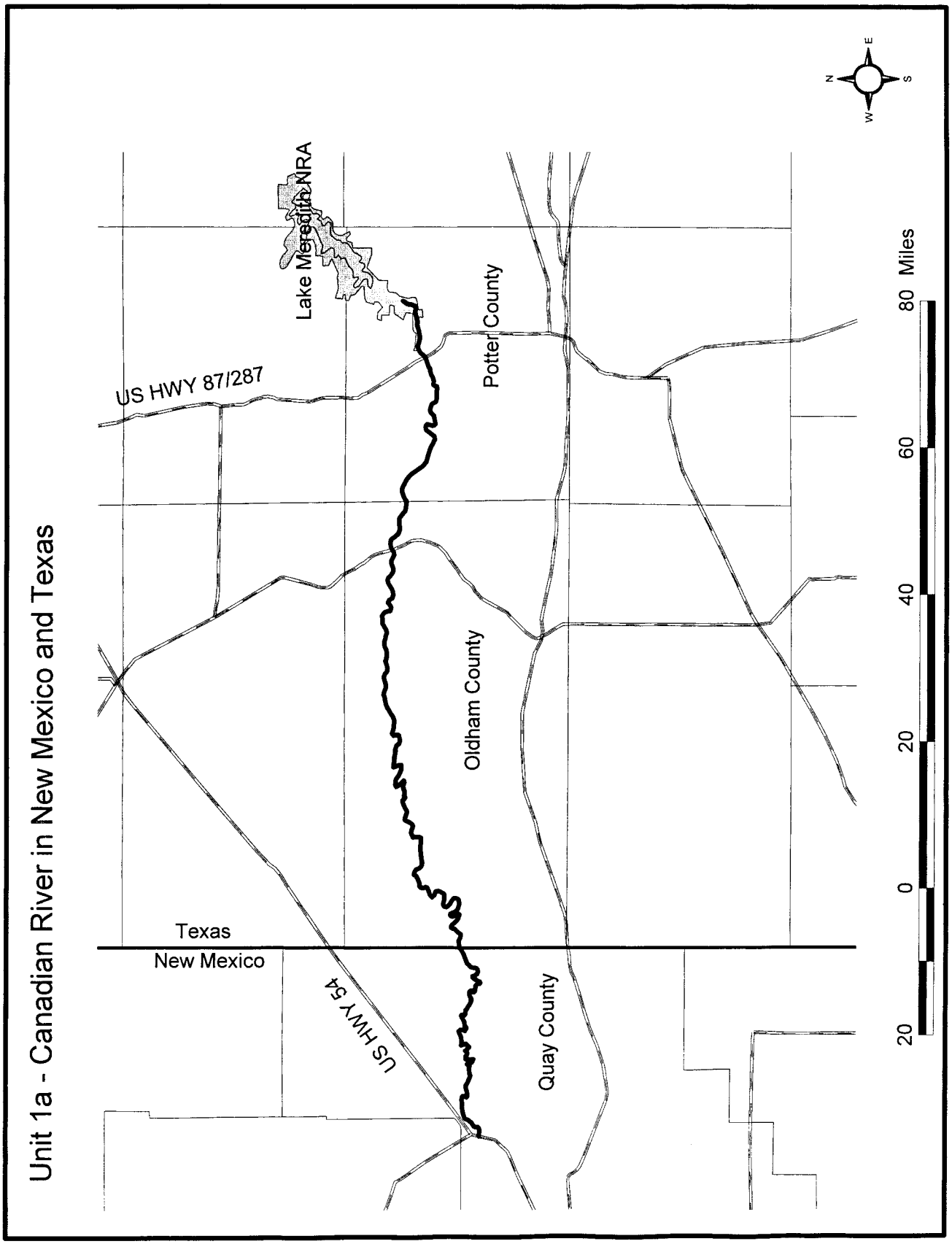
Map 1. General locations of the 5 units of proposed critical habitat for the Arkansas River Shiner.

[Arkansas River Shiner Map 1, General Map]

Arkansas River Shiner (*Notropis Girardi*)

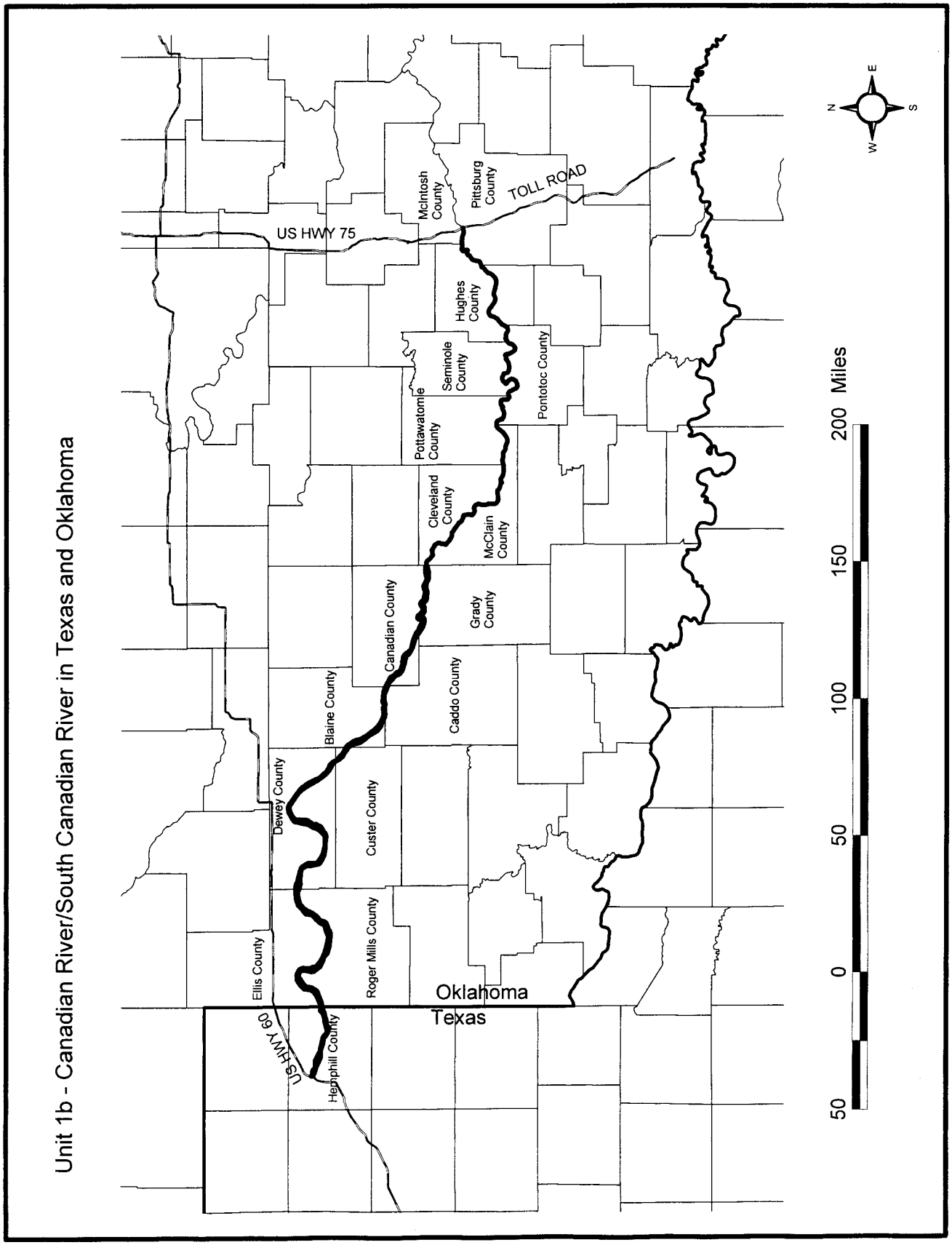
Reach 1. Canadian/South Canadian River, New Mexico, Texas, and Oklahoma.

a. Canadian River-approximately 215 km (134 mi) from U.S. Highway 54 bridge near Logan, Quay County, New Mexico (NMPM, T.13N., R.33E., NW¼ Sec. 14) downstream to the confluence with Coetas Creek, Potter County, Texas (35°27′53″ N, 101°52′46″ W).


Unit 1a - Canadian River in New Mexico and Texas
Lake Meredith NRA
US HWY 87/287
Potter County
Oldham County
Texas
New Mexico
US HWY 54
Quay County
20
0
20
40
60
80 Miles
N
E
S
W

[Arkansas River Shiner Map 2, Unit 1a]

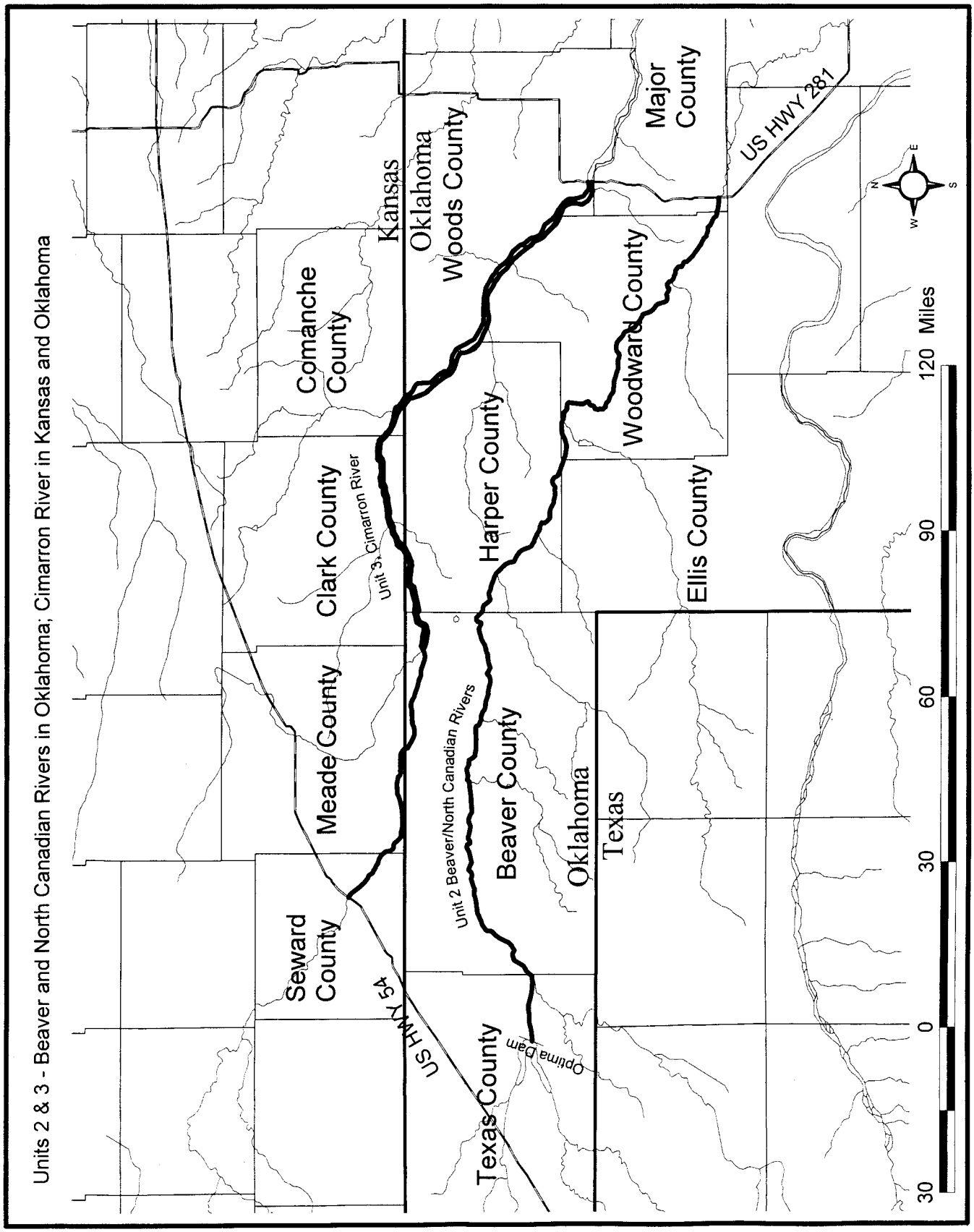
b. Canadian River—approximately 593 km (368 mi), extending from U.S. Highway 60/83 bridge near Canadian, County, Texas (35°56′02″ N, 100°22′00″ W) downstream to Indian Nation Turnpike bridge northwest of McAlester, Oklahoma (IM T.8N., R.13E., SE¼ SW¼ SE¼ Sec. 23).


Unit 1b - Canadian River/South Canadian River in Texas and Oklahoma
US HWY 75
TOLL ROAD
McIntosh County
Pittsburg County
Hughes County
Seminole County
Pontotoc County
Pottawatomie County
Cleveland County
McClain County
Canadian County
Grady County
Caddo County
Blaine County
Dewey County
Custer County
Ellis County
Roger Mills County
Hemphill County
US HWY 60
Oklahoma
Texas
N
E
S
W
50
0
50
100
150
200 Miles

[Arkansas River Shiner Map 3, Unit 1b]

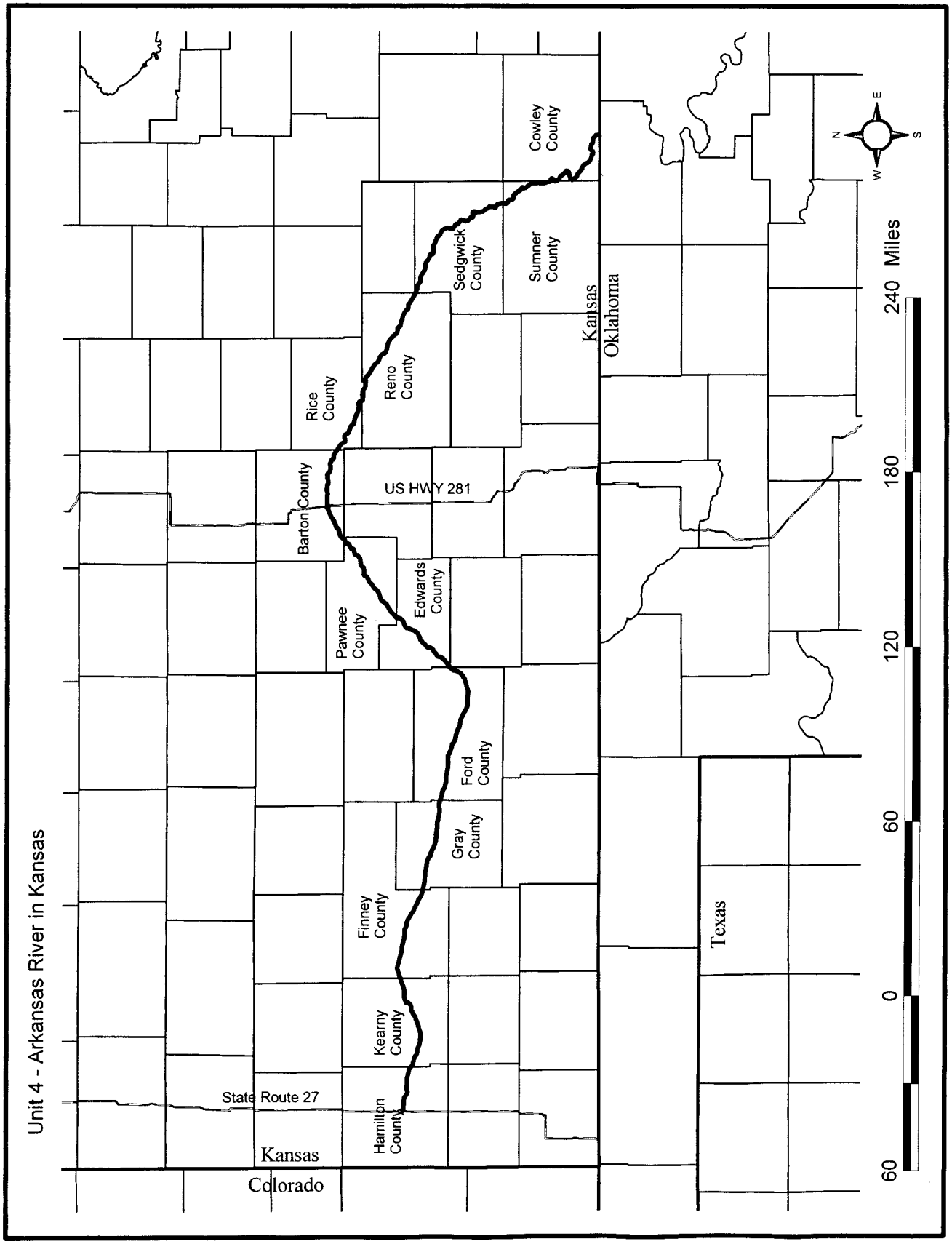
Reach 2. Beaver/North Canadian River, Texas, Beaver, Harper, Ellis, Woodward, and Major counties, Oklahoma—259 km (161 mi) of river extending from Optima Dam in Texas County, Oklahoma (CM,T.2N., R.18E., NW¼ SE¼ SE¼ Sec. 5) downstream to U.S. Highway 60/281 bridge in Major County, Oklahoma (IM, T.20N., R.16W., west boundary Sec. 28).

Reach 3. Cimarron River, Seward, Meade, Clark and Comanche counties, Kansas and Beaver, Harper, Woods, and Woodward, counties, Oklahoma—215 km (134 mi) of river extending from U.S. Highway 54 bridge in Seward County, Kansas (SPM, T. 33 S., R. 32 W., Sec. 25). downstream to U.S. Highway 281 bridge in Woods County, Oklahoma (IM, T.24N., R.16W., Sec. 35).


Units 2 & 3 - Beaver and North Canadian Rivers in Oklahoma; Cimarron River in Kansas and Oklahoma
Kansas
Oklahoma
Woods County
Major County
US HWY 281
Comanche County
Clark County
Unit 3 Cimarron River
Harper County
Woodward County
Ellis County
Meade County
Unit 2 Beaver/North Canadian Rivers
Beaver County
Oklahoma
Texas
Seward County
US HWY 54
Texas County
Optima Dam
0
30
60
90
120 Miles
30
N
E
S
W

[Arkansas River Shiner Map 4, Units 2 and 3]

Reach 4. Arkansas River, Hamilton, Kearny, Finney, Gray, Ford, Edwards, Kiowa, Pawnee, Barton, Rice, Reno, Sedgwick, Sumner, and Cowley counties, Kansas—584 km (363 mi) of river extending from Kansas State Highway 27 bridge in Hamilton County, Kansas (SPM, T. 24 S., R. 40 W., Sec. 18). downstream to KS/OK State line in Cowley County, Kansas (SPM, T.35S., R.5E., southern boundary Sec. 18).


Unit 4 - Arkansas River in Kansas
Cowley County
Sedgwick County
Sumner County
Kansas
Oklahoma
Rice County
Reno County
Barton County
US HWY 281
Pawnee County
Edwards County
Ford County
Gray County
Finney County
Kearny County
Hamilton County
State Route 27
Kansas
Colorado
Texas
N
E
S
W
60
0
60
120
180
240 Miles

[Arkansas River shiner Map 5, Unit 4]

Dated: June 20, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–16399 Filed 6–29–00; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 061900E]

Caribbean Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings.

SUMMARY: The Caribbean Fishery Management Council will hold a series of public hearings in Puerto Rico and the U.S. Virgin Islands on Draft Amendment 1 to the Fishery Management Plan for Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands (FMP). The objectives of Amendment 1 are to address the issues of overfishing of the queen conch resource and apparent resource declines and to collect additional fishery information necessary for improved management.

DATES: The Council will accept written comments on the draft Amendment 1 through July 31, 2000. The public hearings will be held July 10–26, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates, times, and locations of the public hearings.

ADDRESSES: Written comments should be sent to Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918–2577. The Council's telephone number is (787) 766–5926. Copies of draft Amendment 1 and an executive summary will be available at the hearings or may be obtained from the Council at preceding address. See **SUPPLEMENTARY INFORMATION** for specific hearing locations.

FOR FURTHER INFORMATION CONTACT: Contact Miguel A. Rolon, Executive Director, or Graciela Garcia-Moliner, FMP and Habitat Specialist, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918–2577. The Council's telephone number is (787) 766–5926. E-mail addresses are Miguel.A.Rolon@noaa.gov or Graciela.Garcia-Moliner@noaa.gov.

SUPPLEMENTARY INFORMATION:

Management Measures

The Caribbean Fishery Management Council will hold a series of public hearings in Puerto Rico and the U.S. Virgin Islands to obtain input from fishers and the general public on the following draft Amendment 1 alternative management measures (corresponding draft Amendment 1 sections are referenced):

Alternative 1 (section 5.1 -Preferred Alternative): Prohibit the harvest and possession of queen conch in the exclusive economic zone (EEZ);

Alternative 2 (section 5.2): Prohibit the harvest and possession of queen conch by recreational fishers in the EEZ;

Alternative 3 (section 5.3): Prohibit the harvest of queen conch in the EEZ by all fishers using SCUBA gear;

Alternative 4 (section 5.4): Prohibit the harvest of queen conch in the EEZ by recreational fishers using SCUBA;

Alternative 5 (section 5.5): Establish a permit for queen conch for fishers and dealers.

Alternative 6 (section 5.6): Establish a limited entry system for queen conch fishers;

Alternative 7 (section 5.7): Establish a trip limit for commercial fishers of 100 pounds (45.4 kg) of queen conch meat per vessel per trip, and not more than 300 pounds (136.1 kg) per week for each vessel;

Alternative 8 (section 5.8): Establish a trip limit of 150 queen conch per commercial fisher per trip;

Alternative 9 (section 5.9): Change the dates for the annual closed harvest season for queen conch from July 1–September 30 to July 1–October 31 of each consecutive year;

Alternative 10 (section 5.10): Change the dates for the annual closed harvest season for queen conch from July 1–September 30 to June 1–September 30 of each consecutive year;

Alternative 11 (section 5.11): Change the current annual closed harvest season for queen conch from the 3-month period of July 1–September 30 to a 4-month period (could be two separate sub-periods) other than those under Alternatives 9 and 10; and

Alternative 12 (section 5.12): No management action taken.

Time and Location for Public Hearings

Public hearings for the draft Amendment 1 will be held at the following dates, times, and locations:

1. Monday, July 10, 2000—Travelodge Hotel, Isla Verde Avenue, Isla Verde, Puerto Rico, from 7 p.m. to 10 p.m.;

2. Tuesday, July 11, 2000—Asociacion de Pescadores la Villa del Ojo, Bo. Borinquen, Sector Crash Boat, Aguadilla, Puerto Rico, from 7 p.m. to 10 p.m.;

3. Wednesday, July 12, 2000—Villa Parguera Hotel, Carr. 304, Km. 3.3, La Parguera, Lajas, Puerto Rico, from 7 p.m. to 10 p.m.;

4. Thursday, July 13, 2000—Reserva Estuarina Bahia de Jobos, Carr. 705, Km. 2.3, Main Street, Aguirre, Puerto Rico, from 2 p.m. to 5 p.m.;

5. Tuesday, July 18, 2000—Holiday Inn, Veterans Drive, Charlotte Amalie, St. Thomas, U.S.V.I., from 7 p.m. to 10 p.m.; 6. Wednesday, July 19, 2000—Legislature Building, Hilltop building, Cruz Bay, St. John, U.S.V.I., from 7 p.m. to 10 p.m.;

7. Thursday, July 20, 2000—Caravelle Hotel, 44A Queen Cross St., St. Croix, U.S.V.I., from 7 p.m. to 10 p.m.;

8. Wednesday, July 26, 2000—Maries Restaurant, Rd. #3, Km. 70.3, Punta Santiago, Humacao, Puerto Rico, from 7 p.m. to 10 p.m.;

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918–2577, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: June 26, 2000.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–16637 Filed 6–29–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 127
Friday, June 30, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Land and Resource Management Plan Direction for Canada Lynx in Colorado and Southern Wyoming

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement in conjunction with amendments to land and resource management plans for the Routt National Forest; Arapaho and Roosevelt National Forests; Pike and San Isabel National Forests; the Sun Juan National Forest; Grand Mesa, Uncompahgre and Gunnison National Forests; and the Rio Grande National Forest located in the State of Colorado; and the Medicine Bow National Forest located in the State of Wyoming. The environmental impact statement will also evaluate proposed management direction pertaining to Canada lynx for the draft revised land and resource management plan for the White River National Forest, located in the State of Colorado. This notice replaces the notice of March 28, 2000 titled Land and Resource Management Plan Amendments for Canada Lynx in Colorado and Southern Wyoming.

SUMMARY: Pursuant to part 36 Code of Federal Regulations (CFR) 219.10(g), the Regional Forester for the Rocky Mountain Region gives notice of the agency's intent to prepare an environmental impact statement (EIS) in conjunction with the establishment of new management direction for the Canada lynx on National Forests in Colorado and Wyoming. On the basis of new information regarding lynx biology developed since the issuance of the land and resource management plans (hereafter referred to as Forest Plans or Plans) mentioned above, the Forest Service has identified a need to update management direction. This notice describes a proposal to change Forest Plans to the extent necessary to respond to recommendations in the Canada Lynx Conservation Assessment and Strategy (LCAS) and other new information regarding the Canada lynx and its habitat.

This new management direction will be established by amending the Land and Resource Management Plans for the Routt National Forest; Arapaho and Roosevelt National Forests; Pike and San Isabel National Forests; the San Juan National Forest; Grand Mesa, Uncompahgre and Gunnison National Forests; the Rio Grande National Forest, and the Medicine Bow National Forest. The White River National Forest will include lynx management direction in its final revised forest plan scheduled to be completed in May 2001. However, the proposed lynx management direction for the White River will be described and analyzed in this EIS in order (1) properly evaluate cumulative environmental effects, (2) adequately disclose such effects to the public, and (3) provide an opportunity for the public to comment on the proposed direction. The analysis of effects relating to the White River National Forest will be incorporated into the FEIS for that Forest's Revised Land and Resource Management Plan.

DATES: Comments concerning the scope of the analysis should be postmarked by August 14, 2000. The agency expects to file a draft environmental impact statement with the Environmental Protection Agency (EPA) and make it available for public, agency, and tribal government comment in the fall of 2000. A final environmental impact statement is expected to be filed in early 2001.

ADDRESSES: Send written comments to: Chris Liggett, Team Leader, Lynx Plan Amendment Team, USDA Forest Service, Rocky Mountain Region, PO Box 25127, Lakewood, Colorado 80225–0127.

FOR FURTHER INFORMATION CONTACT: Chris Liggett, Team Leader, (303) 275–5158.

RESPONSIBLE OFFICIAL: Lyle Laverty, Rocky Mountain Regional Forester, P.O. Box 25127, Lakewood, CO 80225–0127.

SUPPLEMENTARY INFORMATION: The Regional Forester gives notice that the Rocky Mountain Region of the USDA Forest Service is beginning an environmental analysis and decision-making process for this proposed action so that interested or affected people can participate in the analysis and contribute to the final decision. The Forest Service is seeking information, comments, and assistance from individuals, organizations, tribal governments, and federal, state, and local agencies who are interested in or may be affected by the proposed action (36 CFR 219.6). The public is invited to help identify issues and define the range of alternatives to be considered in the environmental impact statement. The range of alternatives to be considered in the DEIS will be based on issues and specific decisions to be made. Written comments identifying issues for analysis and the range of alternatives are encouraged.

Proposed Action

The proposed action has two parts: the first is to amend Forest Plans for the Routt National Forest; Arapaho and Roosevelt National Forests; Pike and San Isabel National Forests; the San Juan National Forest; Grand Mesa, Uncompahgre and Gunnison National Forests; the Rio Grande National Forest, and the Medicine Bow National Forest to, as necessary, establish or revise goals, objectives, standards, guidelines, and monitoring requirements that respond to recommendations contained in the LCAS and other new information regarding the lynx and its habitat. The decision to be made regarding this part of the proposed action is how to amend the Forest Plans listed above to incorporate the new direction regarding lynx, if at all.

The second part of the proposed action is to describe and evaluate management direction for lynx in relation to the draft revised Forest Plan for the White River National Forest. A final decision regarding the adoption of that direction will be made when the Record of Decision is issued for the White River's Revised Land and Resource Management Plan. That decision is expected in the spring of 2001.

Attachment 1 displays that key LCAS recommendations phrased in terms of goals, standards, and guidelines that will be considered as part of the environmental analysis process. Note that existing and proposed Forest Plans may already contain some direction that is essentially the same as the LCAS recommendations. Each plan will be

changed only to the extent necessary to appropriately respond to the LCAS recommendations and other new information.

A range of alternatives that respond to issues developed during scoping will be considered when assessing the proposed action. A reasonable range of alternatives will be evaluated and reasons will be given for eliminating some alternatives from detailed study, if that occurs. A ''no-action alternative'' is required, meaning that new management direction for the Canada lynx would not be established in Forest Plans.

Purpose and Need

The purpose and need for this proposal is to establish Forest Plan management direction designed to respond to the recommendations in the LCAS and other new information concerning the lynx and its habitat. This proposal is limited to the National Forests in the Rocky Mountain Region and Southern Rocky Mountain Geographic Area that have lynx habitat (see list above).

The Secretary of Interior listed the Canada lynx as a threatened species on March 24, 2000. That decision took effect 30 days after publication, on April 24, 2000. A key finding of the listing decision is that ''the inadequacy of existing regulatory mechanisms, specifically the lack of guidance for conservation of lynx in Federal land management plans'' (Department of the Interior, Fish and Wildlife Service, 50 CFR part 17, Determination of Threatened Status for the Contiguous U.S. Distinct Population Segment of the Canada Lynx and Related Rule, p. 147) has contributed to the species' decline. When a species is listed, section 7(a)(2) of the Endangered Species Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat.

This action is also needed to assure that land and resource management plans are in compliance with species viability requirements in the planning regulations that implement the National Forest Management Act. The Rocky Mountain Region has identified the lynx as a sensitive species, it is listed by the State of Colorado as an endangered species, and the State of Wyoming lists the lynx as a ''protected animal'', meaning it is protected from take.

A large amount of new information about the lynx has become available in the past two years. Key elements of this new information to be considered include: (1) The LCAS; (2) a compendium and interpretation of current scientific knowledge in ''Ecology and Conservation of Lynx in the United States, published in October 1999; (3) the Canada Lynx Conservation Agreement, prepared in February 2000 and signed by the Forest Service Regional Foresters and Fish and Wildlife Service Regional Directors responsible for the geographic areas within the range of the lynx in the conterminous United States; (4) the release of lynx in Colorado by the Colorado Division of Wildlife; and (5) the decision by the US Fish and Wildlife Service, effective April 24, 2000, to list the lynx as a threatened species in the conterminous United States, under the provisions of the Endangered Species Act. This information has provided a better understanding of the lynx, its prey base and habitat requirements, particularly the forest communities it uses and the ecology of those forests, and risk factors affecting lynx productivity, mortality, and movements. Forest Plans in the Region were largely developed before issues regarding the lynx were identified and without the benefit of the new information on the lynx and its habitat.''

Public Participation

The first formal opportunity to comment took place during the initial scoping process (40 CFR 1501.7) which began with the issuance of the original notice of intent on March 28, 2000, and ended on May 11, 2000. The issuance of this revised notice marks the beginning of a new scoping period, which will end on August 14, 2000. The purpose of this scoping period is to solicit comments on issues relating to the addition of the White River National Forest to the proposed action and environmental analysis, and the effect that may have on any or all of the Forests listed in this notice. Comments submitted during the original scoping period do not need to be resubmitted.

Public participation will be solicited with news releases or by notifying people in person or by mail. All comments, including the names and addresses when provided, are placed in the record and are available for public inspection and copying at the Forest Service Regional Office. Persons wishing to inspect the comments are encouraged to call ahead (303–275–5103) to facilitate entrance into the building.

The Forest Service will work with tribal governments to address issues concerning Indian tribal self-government and sovereignty, natural and cultural resources held in trust, Indian tribal treaty and Executive order rights, and any issues that significantly or uniquely affect their communities.

Preliminary Issues

Some preliminary issues have already been identified and are listed below. These issues apply only to National Forest System lands on the units listed previously in this notice.

- The adoption of new Forest Plan goals, objectives, standards, guidelines and monitoring requirements (hereafter referred to as ''management direction'') is expected to maintain or enhance habitat conditions for the lynx on National Forest lands. Project implementation is expected to facilitate the development of landscape and site characteristics suitable for lynx and its principal prey, the snowshoe hare.
- The adoption of new management direction may affect the areas where winter and summer recreation take place and how and when these activities are conducted. Activities like cross country skiing, snowmobiling, off-road vehicle use and developed recreation facilities could be affected. New direction could also affect ski area operations and expansions.
- The adoption of new management direction may affect the ability to use roads and trails, the construction of roads and trails and the closure or decommissioning of roads and trails. This potentially influences activities like recreational use, oil and gas leasing, mineral development or other uses associated with Forest Service roads and trails.
- The adoption of new management direction may affect timber harvest practices in order to protect lynx denning sites and foraging areas or to minimize disturbance in key habitat linkage areas. New plan direction may also affect the type of harvest or the timing of harvest in order to preserve or enhance the habitat of the snowshoe hare, a key prey species.
- The adoption of new management direction may affect livestock grazing by requiring that vegetation conditions be maintained to support lynx prey species.

The Forest Service, Rocky Mountain Region is the lead agency. No joint lead agencies have been identified at this time. The Forest Service will continue to cooperate with other federal and state agencies as this action proceeds. There are no permits or licenses required to implement the proposed action.

Release and Review of the EIS

The Forest Service expects the DEIS to be filed with the Environmental Protection Agency (EPA) and to be

available for public, agency, and tribal government comment in the fall of 2000. At that time, the EPA will publish a notice of availability for the DEIS in the **Federal Register**. 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, potential reviewers of the DEIS must participate in the environmental review of the proposal, including this initial scoping period, in such a way that their participation is meaningful and alerts an agency to the reviewer's position and contentions; *Vermont Yankee Nuclear Power Corp.* v. *NRDC* [435 U.S. 519, 553 (1978)]. Also, environmental objections that could be raised at the DEIS stage but 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 these court rulings, it is very important that those interested in this proposed action participate throughout the process, 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 relating to the proposed actions, comments on the DEIS, when it becomes available, 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 statements. In addressing these points, 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. After the comment period on the DEIS ends, comments will be analyzed, considered, and responded to by the Forest Service in preparing the Final EIS. The FEIS is scheduled to be completed in early 2001. The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations and policies in making decisions regarding these amendments.

The FEIS will be the basis for one or more decisions regarding Forest Plans within the range of the Canada lynx in the Southern Rockies geographic area. The responsible official will decide whether or not to implement management direction for the lynx in Forest Plans for the Routt National Forest; Arapaho and Roosevelt National Forests; Pike and San Isabel National Forests; the San Juan National Forest; Grand Mesa, Uncompahgre and Gunnison National Forests; the Rio Grande National Forest, and the Medicine Bow National Forest. The responsible official will document these decisions and reasons for the decisions in one or more Records of Decision. The decisions will be subject to appeal in accordance with 36 CFR 215 in accordance with 36 CFR 217 depending on whether the amendments are significant under the National Forest Management Act requirements at 36 CFR 219.10(f). In addition, the Rocky Mountain Regional Forester will make a separate decision regarding revision of the Forest Plan for the White River National Forest, and document it in another Record of Decision. That decision will be based primarily on the FEIS for the revised White River Land and Resource Management Plan, but will also utilize information contained in this FEIS.

Dated: June 26, 2000.

Lyle Laverty,

Regional Forester, Rocky Mountain Region, U.S. Forest Service.

Attachment 1—Key Recommendations of the LCAS, Phrased in Terms of Potential Goals, Standards, and Guidelines

Goals, Standards, and Guidelines

The goals, standards, and guidelines generally apply only to lynx habitat within a Lynx Analysis Unit. Lynx habitat occurs in mesic coniferous forests that have cold, snowy winters and provide a prey base of snowshoe hare. Lynx habitat is a mosaic within the Engelmann spruce, subalpine fir, lodgepole pine, aspen, mesic Douglas-fir and mesic white fir forested landscapes, generally between 8,000 and 12,000 feet. High elevation sagebrush and mountain shrub communities found adjacent to or intermixed with the forest communities may be potentially important as habitat for alternative prey species.

Category: Physical

Water and Aquatic Resources—Riparian Areas and Wetlands

Standard:

Refer to:

- Range, standard #1.

Category: Biological

Range

Goals:

1. Mange grazing to maintain or move toward the composition and structure of native plant communities within lynx habitat and adjacent shrub-steppe habitats.

Standards:

1. Within lynx habitat, manage livestock grazing in riparian areas and willow carrs to maintain or achieve mid-seral or later condition to provide cover and forage for lynx prey species.
2. Delay livestock use in post-fire and post-harvest created openings until successful regeneration of the shrub and tree components occurs.

Guidelines:

1. Ensure that ungulate grazing does not impede the development of snowshoe hare habitat in natural or created openings within lynx habitat.
2. Manage grazing in aspen stands to ensure sprouting and sprout survival sufficient to perpetuate the long-term viability of the clones.
3. Maintain or achieve mid-seral or higher condition in shrub-steppe habitat that is within the elevational range of forested lynx habitat or that provides landscape connectivity between blocks of primary lynx habitat.

Silviculture

Goals:

1. Design regeneration harvest, planting, and thinning to develop characteristics suitable for lynx and snowshoe hare habitat.
2. Maintain suitable acres or lynx habitat and juxtaposition of habitat through time when planning timber sales and related activities.

Standards:

1. Pre-commercial thinning will be allowed only when stands no longer provide snowshoe hare habitat (*e.g.,* self-pruning processes have eliminated snowshoe hare cover and forage availability during winter conditions with average snowpack).
2. In aspen stands within lynx habitat, favor regeneration of aspen.
3. Following a disturbance such as blowdown, fires, insects, and disease, where lynx denning habitat is less than 10% of a Lynx Analysis Unit, do not salvage harvest when the affected area is smaller than 5 acres if it could contribute to lynx denning habitat. (Exceptions are developed recreation sites or other sites of high human concentration.) Where larger areas are affected, retain a minimum of 10% of the affected area per Lynx Analysis Unit in patches of at least 5 acres to provide future denning habitat. In such areas,

defer or modify management activities that would prevent development or maintenance of lynx foraging habitat.

Also refer to:

- Threatened, Endangered, and Sensitive Species, Lynx Analysis Units, standards 1 and 2.
- Threatened, Endangered, and Sensitive Species, Denning and Foraging Habitat, standard #1.
- Travelways, standard #1.

Guidelines:

1. Management activities retain adequate amounts of coarse woody debris for lynx and snowshoe hare cover, if it exists on site.
2. Commercial thinning projects shall maintain or enhance lynx habitat.
3. Design vegetation management activities that consider retaining or encouraging tree species composition and structure that will provide habitat for red squirrels or other lynx alternate prey species.

Also refer to:

- Range, guideline #2.
- Threatened, Endangered, Sensitive Species, Denning and Foraging Habitat, guideline #1.
- Fire, guidelines 4 and 7.

Threatened, Endangered, and Sensitive Species

Lynx Analysis Units

Goals:

1. Maintain effectiveness of lynx habitat. (Effectiveness is primarily affected by high level of human use.)

Standards:

1. If more than 30% of the lynx habitat in a Lynx Analysis Unit (LAU) is currently in unsuitable condition, no further reduction of suitable habitat shall occur as a result of vegetation management activities.
2. Vegetation management shall not change more than 15 percent of lynx habitat within a LAU to unsuitable condition within a 10-year period.

Denning and Foraging Habitat

Goal:

1. Provide a landscape with interconnected blocks of high quality foraging and denning habitat that allows lynx movement between these habitats.

Standard:

1. Within a Lynx Analysis Unit, maintain denning habitat on at least 10% of the area that is capable of producing stands with characteristics suitable for denning habitat. Denning habitat should be well distributed, in patches generally larger than 5 acres. This applies to vegetation treatment, timber harvest, prescribed fire, fire suppression actions, and other similar activities.

Guidelines:

1. In areas where future denning habitat is desired, or to extend the production of snowshoe hare foraging habitat where forage quality and quantity is declining due to plant succession, consider improvement of habitat through activities such as commercial thinning and selection harvesting. Use harvesting and thinning to retain and recruit understories of small diameter conifers and shrubs preferred by hares and to retain and recruit coarse woody debris.
2. Maintain or improve the juxtaposition of denning to foraging habitat. This can be important in large wildfire events in late seral.
3. Design vegetation and fire management activities to retain or restore lynx denning habitat on landscapes with the highest probability of escaping stand-replacing fire events.

Connectivity and Fragmentation

Goals:

1. Maintain and, where necessary and feasible, restore lynx habitat connectivity across forested landscapes and within and between Lynx Analysis Units. Facilitate wildlife movement within key linkage areas considering highway crossing structures when feasible.
2. Within Lynx Analysis Units that have been fragmented by past management activities that reduced the quality of lynx habitat, management practices will be implemented to move toward forest composition, structure and patterns more similar to those that would have occurred under historical conditions and natural disturbance processes.

Predation/Competition

Goal:

1. Avoid management practices that would increase competition with and predation on lynx

Prey Species:

Goals:

1. Reduce incidental harm or capture of lynx during predator control activities and ensure retention of adequate prey base.
2. Retain and enhance existing habitat conditions for important lynx prey species and alternate prey species, such as the red squirrel.

Category: Disturbance Processes

Fire

Goal:

1. Restore fire as an ecological process through time and use fire as a tool to maintain, enhance, or restore lynx habitat.

Standards:

Refer to:

- Silviculture, standard #3.
- Threatened, Endangered, and Sensitive Species, Lynx Analysis Units, standards 1 and 2.
- Threatened, Endangered, and Sensitive Species, Denning and Foraging Habitat, standard #1.

Guidelines:

1. Consider prescriptions that can result in regeneration and the creation of snowshoe hare habitat when developing burn prescriptions, especially for lodgepole pine and aspen.
2. Design burn prescriptions to promote response by shrub and tree species that are favored by snowshoe hare.
3. Consider the need for pre-treatment of fuels before conducting management ignitions.
4. In lynx habitat, avoid constructing permanent firebreaks on ridges or saddles.
5. Minimize construction of temporary roads and machine fire lines to the extent possible during fire suppression activities in lynx habitat.
6. In the event of a large wildfire in stands that were formally late seral, during the post-disturbance assessment prior to restoration or salvage harvesting, evaluate the potential for providing for lynx denning and foraging habitat.

Also refer to:

- Silviculture, guideline #3.
- Threatened, Endangered, and Sensitive Species, Denning and Foraging Habitat, guidelines 2 and 3.

Category: Social

Recreation—Developed Recreation

Standard:

1. Locate new or relocated trails, roads, and ski lift termini to direct winter use away from diurnal security habitat.
2. Protect key linkage areas when planning new or expanding recreational developments.

Guidelines:

1. Provide adequately sized coniferous inter-trail islands, including the retention of coarse woody material, to maintain snowshoe hare habitat when designing ski area expansions.
2. Identify and protect potential lynx security habitats in and around proposed developments or expansions.
3. Evaluate, and adjust as necessary, ski operations in expanded or newly developed areas to provide nocturnal foraging opportunities for lynx in a manner consistent with operational needs, especially in landscapes where lynx habitat occurs as narrow bands of coniferous forest across the mountain slopes.

Recreation—Dispersed Recreation

Standards:

1. Allow no net increase in groomed or designated over-the-snow routes and designated snowmobile play areas by Lynx Analysis Units unless the designation serves to consolidate unregulated use and improves lynx habitat. Winter logging activity would be an exception.

Guidelines:

1. Limit or discourage activities that result in snow compaction in areas where it is shown to compromise lynx habitat. Such actions should be undertaken on a priority basis considering habitat function and importance.

Also refer to:

- Travelways, guidelines 3 and 4.

Category: Administrative

Infrastructure—Travelways

Standard:

1. Close temporary roads constructed for timber sale activities in lynx habitat to public use during the winter.

Guidelines:

1. Design new roads that could impact lynx habitat, especially the entrance, for effective closure and subsequent decommissioning, if it meets overall management objectives.

2. Minimize roadside brushing on low speed, low volume roads in order to provide snowshoe hare habitat.

3. Locate trails and roads away from forested stringers to avoid fragmentation.

4. Minimize creation of permanent travelways on ridgetops and saddles that could facilitate increased access by lynx competitors in lynx habitat.

Real Estate—Land Adjustments

Goal:

1. Retain key wildlife linkage areas on National Forest System lands in public ownership. Cooperate with other ownerships to establish unified management direction via habitat conservation plans, conservation easements or agreements, and land acquisition.

Special Uses

Goal:

1. Design activities and facilities to minimize impacts on lynx habitat.

Standard:

1. Restrict authorized use under permits to designated routes when in lynx habitat on projects where over-snow access is required. Close newly constructed roads to public access during project activities. Upon project completion, evaluate the need to reclaim these roads.

Guideline:

1. Encourage remote monitoring of sites that are located in lynx habitat, so that they do not have to be visited daily.

Transportation and Utility Corridors

Goals:

1. Reduce the potential for lynx mortality related to highways.

2. Work cooperatively with the Federal Highway Administration and State Departments of Transportation to address the movement needs of lynx.

Standard:

Maintain connectivity of lynx habitat during the planning for highway rights-of-ways, construction, reconstruction, and other possible transportation corridors.

GLOSSARY

Fragmentation—Human alteration of natural landscape patterns, resulting in reduction of total area, increased isolation of patches, and reduced connectivity between patches of natural vegetation.

Highway—A road that is at least 2 lanes wide, paved with asphalt or concrete. Average daily traffic may exceed 5,000 vehicles and speeds are 45 mph or greater.

Key Linkage Areas—Critical areas for lynx habitat. Usually, the factors that place connectivity at risk are highways or private land developments. Special management emphasis is recommended to maintain or increase the permeability of key linkage areas.

Lynx Analysis Unit (LAU)—The LAU is a project analysis unit upon which direct, indirect, and cumulative effects analyses are performed. LAU boundaries should remain constant to facilitate planning and allow effective monitoring of habitat changes over time. an area of at least the size used by an individual lynx, about 25–50 square miles in contiguous habitat (should be larger in less contiguous, poorer quality, or naturally fragmented habitat.

Lynx Denning Habitat—Habitat used during parturition and rearing of young until they are mobile. The common component appears to be large amounts of coarse woody debris, either down logs or root wads. The coarse woody debris provides escape and thermal cover for kittens. Denning habitat may be found either in older mature forest of conifer or mixed conifer/deciduous types, or in regenerating stands (greater than 20 years since disturbance). Denning habitat must be located within daily travel distance of foraging habitat.

Lynx Diurnal Security Habitat—In lynx habitat, areas that provide secure winter daytime bedding sites for lynx in highly disturbed landscapes, *e.g.,* large developed winter recreational sites or areas of concentrated winter recreational use. It is presumed that lynx may be able to adapt to the presence of regular and concentrated human use during winter, so long as other critical habitat needs are being met, and security habitat blocks are present and adequately distributed in such disturbed landscapes. Security habitat will provide lynx the ability to retreat from human disturbance during winter daytime hours, emerging at dusk to hunt when most human activity ceases. Security habitats will generally be sites that naturally discourage winter human activity because of extensive forest floor structure, or stand conditions that otherwise make human access difficult, and should be protected to the degree necessary. Security habitats are likely to be most effective if they are sufficiently large to provide effective visual and acoustic insulation from winter human activity and to easily allow movement away from infrequent human intrusion. These winter habitats must be distributed such that they are in proximity to foraging habitat.

Lynx Foraging Habitat—Habitat that supports primary prey (snowshoe hare) and/or important alternate prey (especially red squirrels) that are available to lynx. The highest quality snowshoe hare habitats are those that support a high density of young trees or shrubs (greater than 4,500 stems or branches per acre), tall enough to protrude above the snow. These conditions may occur in early successional stands following some type of disturbance, or in older forests with a substantial understory of shrubs and young conifer trees. Coarse wood debris, especially in early successional stages (created by harvest regeneration units and large fires), provides important cover for snowshoe hares and other prey. Red squirrel densities tend to be highest in mature cone-bearing forests with substantial quantities of coarse woody debris.

Lynx Habitat—Lynx occur in mesic coniferous forest that have cold, snowy winters and provide a prey base of snowshoe hare. Lynx records occur predominantly in lodgepole pine, subalphine fir, Engelmann spruce, and aspen vegetation cover types on subalpine fir habitat types in the western United States. Cool, moist Double-fir, grand fir, or western larch forest, where they are interspersed with subalphine forests, also provide habitat for lynx.

Primary Lynx Habitat—Habitat that must be present to support foraging, denning, and rearing of young (in the

western U.S. primary habitat is lodgepole pine or subalphine fir habitat types).

Secondary Lynx Habitat—Other vegetation types, when intermingled with or immediately adjacent to primary habitat, that contribute to lynx annual needs (cool/moist Douglas-fir habitat types adjacent to primary habitat).

Unsuitable Habitat Condition—An area that is capable of producing lynx foraging or denning habitat, but which currently does not have the necessary vegetation composition, structure and/or denisyt ot support lynx and snowshoe hare populations during all seasons. For example, during the winter, vegetation must provide dense cover that extends above (greater than 6 feet) the average snow depth. Timber harvest, salvage harvest, commercial thinning, and prescribed fire may or may not result in unsuitable habitat conditions.

Snowshow Hare Habitat—See foraging habitat.

[FR Doc. 00–16546 Filed 6–29–00; 8:45 am]

BILLING CODE 3410–81–M

DEPARTMENT OF AGRICULTURE

Opal Creek Scenic Recreation Area (SRA) Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The second Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Stayton, Oregon on Monday, July 17, 2000. The meeting is scheduled to begin at 6 p.m., and will conclude at approximately 8:30 p.m. The meeting will be held in the South Room of the Stayton Community Center, 400 West Virginia Street, Stayton, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (Pub. L. 104–208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA, and consults on a periodic and regular basis on the management of the area. The tentative agenda includes:

(1) Overview of the Federal Advisory Committee Act (FACA); (2) overview of the planning process including the National Environmental Policy Act, National Forest Management Act, and amending the Forest Plan; and (3) a presentation on the Cultural and Historic Resource Inventory.

The public comment period is tentatively scheduled to begin at 8 p.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the July 17 meeting by sending them to Designated Federal Official Stephanie Phillips at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Stephanie Phillips; Williamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854–3366.

Dated: June 26, 2000.

Y. Robert Iwamoto,

Deputy Forest Supervisor.

[FR Doc. 00–16547 Filed 6–29–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Amendment to Certification of Central Filing System—Oklahoma

The Statewide central filing system of Oklahoma has been previously certified, pursuant to Section 1324 of the Food Security Act of 1985, on the basis of information submitted by the Oklahoma Secretary of State, for farm products produced in that State (52 FR 49056, December 29, 1987).

The certification is hereby amended on the basis of information submitted in a May 23, 2000 letter by Anita Charlson, Supervisor, Central Filing System for Agriculture Liens, for additional farm products used or produced in farming operations, or a product of such crop or livestock in its unmanufactured state that is in the possession of a person engaged in farming operations in that State as follows: echinacea, broccoli, eggplant.

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.22(a)(3)(v), 2.81(a)(5), 55 FR 22795.

Dated: June 23, 2000.

John Stencel,

Acting Deputy Administrator, Packers and Stockyards Programs.

[FR Doc. 00–16540 Filed 6–29–00; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Forest Service

Notice of Meeting

SUMMARY: Maintaining Agriculture and Forestry in Rapidly Growing Areas Listening Forums hosted by members of the USDA Policy Advisory Committee on Farmland Protection. The USDA Policy Advisory Committee on Farm and Forest Lands Protection is holding listening forums this summer to solicit policy feedback and anecdotal information on what works and what doesn't from a community's perspective in working with federal tools designed to maintain land as farmland and forest land. The input received from these forums will be synthesized into a report that USDA will issue on this subject later this year.

Specifically, the forums will ask for public comment on the following questions:

1. What are the economic, environmental and social benefits of farms and forested lands for communities, especially those in rapidly growing regions?

2. What are the challenges that communities and individuals face in trying to maintain farms and forested lands, especially in rapidly growing areas;

3. What sorts of opportunities exist to capitalize on market opportunities (*e.g.* direct marketing and agri-tourism) to encourage maintenance of farmland and forestland.

4. What role could the federal government play to better support farmers and forest operators in taking advantage of these opportunities?

DATES: The first forum will convene Thursday, July 13, 2000, at 9:00 a.m. and conclude at 12:00 p.m.. It will be held at the Dekalb County Farm Bureau Center for Agriculture, 1350 West Prairie Drive, Sycamore, Illinois 60178. The second forum is scheduled for Friday, July 21, 2000, beginning at 9:00 a.m. and continuing until 12:00 p.m., at the University of California, Davis, Alumni and Visitors Center, in Room AGR, located on Old Davis Road and Mrak Hall Drive, Davis California. The

third forum will be in late July in Seattle, Washington (location to be determined). And, a fourth forum will be held early August in the Highlands Region in New Jersey (Date and location to be determined). Three informational gathering sessions are being considered.

ADDRESSES: Are included in the above information under **DATES**.

SUPPLEMENTARY INFORMATION: Notice of these forums is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information about the USDA Policy Advisory Committee, including any revised agendas for the July 13 and 21, 2000 forums that may appear after this **Federal Register** Notice is published, may be found on the World Wide Web at http://www.usda.gov.

Draft Agenda for the Forums

A. Opening remarks
B. Panel presentations
C. Public participation: oral statements, questions and answer period.
D. Closing remarks

Procedural

The forums are open to the general public. Members of the general public will have an opportunity to present their ideas and opinions during each forum. Persons wishing to make oral statements should pre-register by contacting Ms. Mary Lou Flores at (202) 720–4525. Those who wish to submit written statements can do so by submitting 25 copies of their statements on or before July 11, 2000 for the Dekalb County, IL forum, on or before July 17, 2000 for the UC Davis, CA forum, and on or before July 20, 2000 for the Seattle, WA forum. Please send them to Ms. Stacie Kornegay, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013, Room 6013. The written form of the oral statements must not exceed 5 pages in 12-point pitch. At each forum, reasonable provisions will be made for oral presentations of no more than three minutes each in duration.

FOR FURTHER INFORMATION CONTACT: Requests for special accommodations due to disability, questions or comments should be directed to Rosann Durrah, Designated Federal Official, telephone (202) 720–4072, fax (202) 690–0639, email *rosann.durrah@usda.gov*.

Dated: June 26, 2000.

Anne Keys,

Acting Under Secretary, Natural Resources and Environment, USDA.

[FR Doc. 00–16600 Filed 6–29–00; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Berkeley Electric Cooperative; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) with respect to the construction of a 115/24.9 kV distribution substation by Berkeley Electric Cooperative. Berkeley Electric Cooperative may request financing assistance from the RUS to finance the construction of the substation.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone (202) 720–0468, e-mail at bquigel@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The proposed substation will be located on a 18.4-acre site in Dorchester County, South Carolina, between Parkers Ferry Road and Ridge Road approximately 1000 feet east of the intersection of these two roads. The substation will cover approximately 7.5 acres of the site. The substation will be surrounded by a seven foot high chain link fence topped with three strands of barbed wire. A crushed stone driveway approximately 22 feet in width will be constructed from Ridge Road to the substation for access. The substation will be connected to an existing 115 kV transmission line which parallels Parkers Ferry Road. Approximately 500 feet of transmission line will be constructed to connect the substation to the transmission line.

Copies of the FONSI are available from RUS at the address provided herein or from Tom Meyers, Vice President of Engineering, Berkeley Electric Cooperative, 414 North Highway 52, Monks Corner, South Carolina 29461, telephone (843) 761–8200.

Dated: June 27, 2000.

Blaine D. Stockton, Jr.,

Assistant Administrator, Electric Program.

[FR Doc. 00–16655 Filed 6–29–00; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete services previously furnished by such agencies.

DATES: Comments must be received on or before July 31, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (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, Operation of Individual Equipment Element Store and HAZMART, MacDill Air Force Base, Florida.

NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.

Janitorial/Custodial

San Joaquin Valley Agricultural Science Center, Parlier, California.

NPA: Valley Service Connection, Inc., Stockton, California.

Pasco Outpatient Clinic, 9912 Little Road, New Port Richey, Florida.

NPA: Lakeview Center, Inc., Pensacola, Florida.

Selfridge Air National Guard Base, Michigan.

NPA: New Horizons of Oakland County, Inc., Pontiac, Michigan.

Laundry Service

James H. Quillen VA Medical Center, Mountain Home, Tennessee.

NPA: Dawn of Hope Development Center, Inc., Johnson City, Tennessee.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action 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 deletion from the Procurement List.

The following services have been proposed for deletion from the Procurement List:

Toner Cartridge Remanufacturing, Naval Training Center, Great Lakes, Illinois.

Toner Cartridge Remanufacturing, Fleet and Industrial Supply Center, Puget Sound, Bremerton, Washington.

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–16641 Filed 6–29–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List, Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to 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.

EFFECTIVE DATE: July 31, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 17, 1999 and April 21 and May 12, 2000, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 FR 50485 and 65 FR 21395 and 30563) of proposed additions to the Procurement List. 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

Electronic Components

7420–00–NIB–0014 (Palm-Sized Portfolio w/ Calculator)
7420–00–NIB–0015 (9″ × 12″ Portfolio w/ Calculator)
7420–00–NIB–0016 (Flip-Up Calculator)
7420–00–NIB–0017 (10-Digit Calculator)
7420–00–NIB–0018 (12-Digit Calculator)
7420–00–NIB–0019 (Mouse Pad w/ Calculator)
7420–00–NIB–0020 (Mouse Pad w/ Calculator/Disk Holder)
7420–00–NIB–0021 (Clipboard w/Calculator)

Services

Grounds Maintenance

Playground Areas, Camp Lejeune, North Carolina

Janitorial/Custodial

Sandra Day O'Connor Federal Building, 401 West Washington Street, Phoenix, Arizona

Naval Medical Center (NMC) and Branch Medical and Dental Clinics at the following locations:

North Island Naval Air Station, Naval Station,

Naval Amphibious Base, Miramar Naval Air Station, Naval Training Center and Marine Corp Recruit Depot, San Diego, California

U.S. Coast Guard, Elizabeth City, North Carolina

Publication File Maintenance for National Environmental Publications Internet Site (NEPIS) Website

Environmental Protection Agency, Cincinnati, Ohio

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.

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–16642 Filed 6–29–00; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Cancellation of Public Meeting of the New Jersey Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission which was to have convened at 9:30 a.m. and adjourned at 4:00 p.m. on Friday, June 30, 2000, at the Delaware River Port Authority,

Multipurpose Room, 11th Floor, One Port Center, Two River Drive, Camden, New Jersey has been canceled.

The original notice for the meeting was announced in the *Federal Register* on Thursday, June 1, 2000, FR Doc. 00–13677, 65 FR, No. 106, p. 35045.

Persons desiring additional information should contact Edward Darden, of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116).

Dated at Washington, DC, June 27, 2000.

Lisa M. Kelly,

Special Assistant to the Staff Director Regional Programs Coordination Unit.

[FR Doc. 00–16599 Filed 6–27–00; 2:16 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Preliminary Results of Antidumping Duty Administrative Review for Two Manufacturers/Exporters: Certain Preserved Mushrooms From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a timely request from two manufacturer/exporters and the petitioners,[1] on March 30, 2000, the Department of Commerce published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China with respect to China Processed Food Import & Export Co., Gerber Food (Yunnan) Co., Ltd., Mei Wei Food Industry Co., Ltd., and Tak Fat Trading Co. The periods of review are August 5, 1998, through January 31, 2000, for China Processed Food Import & Export Co. and Gerber Food (Yunnan) Co., Ltd., and May 7, 1998 through January 31, 2000, for Mei Wei Food Industry Co., Ltd. and Tak Fat Trading Co.[2]. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 65 FR 16875, March 30, 2000. As a result of the review, the Department of Commerce has preliminarily determined that dumping margins exist for the exports of the subject merchandise by Mei Wei Food Industry Co., Ltd. and Tak Fat Trading Co. for the covered period. The Department will issue separate preliminary results no later than October 31, 2000, for the other two respondents.

We invite interested parties to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: June 30, 2000.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Rebecca Trainor, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to 19 CFR part 351 (1999).

Background

On February 19, 1999, the Department of Commerce (the Department) published in the **Federal Register** (64 FR 8308) an antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC). On February 14, 2000, the Department published in the **Federal Register** (65 FR 7348) a notice of opportunity to request an administrative review of the antidumping duty order on certain preserved mushrooms from the PRC covering the period August 5, 1998, through January 31, 2000. On February 29, 2000, the petitioners requested, in accordance with 19 CFR 351.213, that we conduct an administrative review of exports to the United States by China Processed Food Import & Export Co. (CPF), Gerber Food (Yunnan) Co. (Gerber), Mei Wei Food Industry Co., Ltd. (Mei Wei), and Tak Fat Trading Co. (Tak Fat) of certain preserved mushrooms from the PRC. CPF and Gerber also requested on February 28, 2000, that we conduct administrative reviews of their respective exports. On March 29, 2000, the Department issued the antidumping questionnaire to CPF, Gerber, Mei Wei and Tak Fat. On March 30, 2000, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain preserved mushrooms from the PRC with respect to CPF, Gerber, Mei Wei and Tak Fat (65 FR 16875). The Department is now conducting that review in accordance with section 751 of the Act.

The Department received timely questionnaire responses from CPF and Gerber and is currently analyzing their information. We will issue preliminary results based on these responses by the statutory due date. However, on May 5, 2000, Mei Wei and Tak Fat submitted a letter to the Department advising that they would not respond to the antidumping duty questionnaire because they claimed that the merchandise they exported to the United States during the period of review (POR) was ''marinated'' mushrooms which are outside the scope of the antidumping duty order.

In a separate scope proceeding, the Department determined that certain preserved mushrooms produced, exported, or imported by Mei Wei, Tak Fat, Leung Mi International, Tak Yeun Corp., and the U.S. Importer Genex International Corp. and identified as ''marinated'' or ''acidified'' are within the scope of the antidumping duty order. This determination was based on the acetic acid content level of the merchandise in question. *See Recommendation Memorandum—Final Ruling of Request by Tak Fat, et al. for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China*, dated June 19, 2000. As a result of the scope proceeding, the Department learned that a large number of entries of the merchandise at issue in the scope inquiry produced/exported by Mei Wei and Tak Fat during the POR have not been liquidated. *See* ''U.S. Customs Data on Imports of Acidified Mushrooms,'' Memorandum to the File dated June 19, 2000. This merchandise incorrectly entered the U.S. Customs territory without the payment of cash deposits or the posting of a special dumping bond by the U.S. Importer. In order to insure the proper final collection of antidumping duties on these preserved mushroom entries, and

[1] The petitioners are the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Nottingham, PA; Modern Mushrooms Farms, Inc., Toughkernamon, PA; Monterrey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushrooms Canning Company, Kennett Square, PA; Southwood Farms, Hockessin, DE; Sunny Dell Foods, Inc., Oxford, PA; United Canning Corp., North Lima, OH.

[2] Because of an affirmative critical circumstance finding, liquidation was suspended 90 days prior to publication of the preliminary less-than-fair-value (LTFV)investigation for these companies.

given Tak Fat's and Mei Wei's refusal to cooperate in this review, we are issuing the preliminary results of this administrative review with respect to Mei Wei and Tak Fat on an expedited basis. *See* ''Separate Rates Determination'' and ''PRC-Wide Rate and Use of Facts Otherwise Available'' sections below.

Scope of the Review

The products covered by this review are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this review are the species *Agaricus bisporus* and *Agaricus bitorquis.* ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this review are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this review are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms'; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[3]

The merchandise subject to this review is classifiable under subheadings 2003.1000.27, 2003.1000.31, 2003.1000.37, 2003.1000.43, 2003.1000.47, 2003.1000.53, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States (''HTS''). Although the HTS subheadings are provided for convenience and Customs purposes, our written description of the scope of this review is dispositive.

Separate Rates Determination

In previous antidumping duty proceedings, the Department has treated the PRC as a non-market economy (NME) country. We have no evidence suggesting that this determination should be changed. Accordingly, the Department has determined that NME treatment is appropriate in this review. *See* section 771(18)(c)(i) of the Act.

To establish whether a company operating in a NME is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, May 6, 1991 (*Sparklers*), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, May 2, 1994 (*Silicon Carbide*). Under this test, companies operating in a NME are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities (*Sparklers*, 56 FR 20589). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies (*id.*). *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management (*see Silicon Carbide*, 59 FR 22587).

In the instant review, neither Mei Wei nor Tak Fat submitted responses to the Department's antidumping duty questionnaire, including the separate rates section. We therefore preliminarily determine that these companies did not establish their entitlement to a separate rate in this review and, therefore, are presumed to be part of the PRC NME entity and, as such, are subject to the PRC country-wide rate.[4]. Accordingly, exports by these companies are preliminarily assigned the PRC-wide rate, which is the highest margin in the LTFV petition.

PRC-Wide Rate and Use of Facts Otherwise Available

As noted above, Mei Wei and Tak Fat submitted a letter to the record stating that they would not participate in this review. Because of their refusal to cooperate in this review and their failure to establish their entitlement to a separate rate, we determine that the application of the PRC-wide rate, which is based on facts available, is appropriate, pursuant to section 776(a)(2) of the Act.

Section 776(a)(2) of the Act provides that ''if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.''

Because Mei Wei and Tak Fat have refused to participate in this administrative review, we find that, in accordance with sections 776(a)(2)(A) and (C) of the Act, the use of total facts available is appropriate (*see, e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Persulfates from The People's Republic of China*, 62 FR 27222, 27224, May 19, 1997; and *Certain Grain-Oriented Electrical Steel From Italy: Final Results of Antidumping Duty Administrative Review*, 62 FR 2655, Jan. 17, 1997 (for a more detailed discussion, *see Preliminary Results of Antidumping Duty Administrative Review: Certain Grain-Oriented Electrical Steel From Italy*, 61 FR 36551, 36552, July 4, 1996)). Because these respondents have provided no information, sections 782(d) and (e) are not relevant to our analysis.

Section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a

[3] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order.

[4] In the LTFV investigation, Tak Fat was identified as a Hong Kong company. There is no information about Tak Fat's location, ownership, or corporate structure on the record of this review that would establish Tak Fat's eligibility for a separate rate.

more favorable result by failing to cooperate than if it had cooperated fully.'' *See Statement of Administrative Action (SAA) accompanying the URAA*, H.R. Doc. No. 103–316, at 870 (1994). Furthermore, ''an affirmative finding of bad faith on the part of the respondent is not required before the Department may make an adverse inference.'' *See Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340, May 19, 1997.

Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. Under section 782(c) of the Act, a respondent has a responsibility not only to notify the Department if it is unable to provide requested information, but also to provide a ''full explanation and suggested alternative forms.'' Mei Wei's and Tak Fat's March 5, 2000, letter documented for the record their refusal to provide this information and they have otherwise failed to respond to our requests for information, thereby failing to comply with this provision of the statute. Therefore, we determine that respondents failed to cooperate to the best of their ability, making the use of an adverse inference appropriate.

In this proceeding, in accordance with Department practice (*see, e.g., Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review Brake Rotors From the People's Republic of China,* 64 FR 61581, 61584, November 12, 1999; and *Preliminary Results of Antidumping Duty Administrative Review: Fresh Garlic From the People's Republic of China,* 64 FR 39115, July 21, 1999), as adverse facts available, we have preliminarily assigned to exports of subject merchandise by Mei Wei and Tak Fat the PRC-wide rate which is 198.63 percent, the rate established in the LTFV investigation, and the highest dumping margin determined in any segment of this proceeding. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan,* 63 FR 8909, 8932, February 23, 1998.

Section 776(c) of the Act provides that where the Department selects from among the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. Secondary information is described in the SAA as ''{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* SAA at 870. The SAA states that ''corroborate'' means to determine that the information used has probative value (*id.*). To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. To examine the reliability of margins in the petition, we examine whether, based on available evidence, those margins reasonably reflect a level of dumping that may have occurred during the period of investigation by any firm, including those that did not provide us with usable information. This procedure generally consists of examining, to the extent practicable, whether the significant elements used to derive the petition margins, or the resulting margins, are supported by independent sources. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin may not be relevant, the Department will attempt to find a more appropriate basis for facts available. *See, e.g., Final Results of Antidumping Duty Administrative Review: Fresh Cut Flowers from Mexico,* 61 FR 6812, 6814, February 22, 1996 (where the Department disregarded the highest margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

In the underlying LTFV investigation, we established the reliability of the petition margin (*see, Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Preserved Mushrooms From the People's Republic of China,* 63 FR 41794, 41798, August 5, 1998; and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China,* 63 FR 72255, December 31, 1998). As there is no information on the record of this review that demonstrates that this rate is not an appropriate adverse facts available rate for the PRC-wide rate, we determine that this rate has probative value and, therefore, is an appropriate basis for the PRC-wide rate to be applied in this review to exports of subject merchandise by Mei Wei and Tak Fat as facts otherwise available.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margin applies for the period May 7, 1998, through January 31, 2000, for those imports where the exporter is Mei Wei or Tak Fat:

Exporter/manufacturer	Margin percentage
PRC-wide Rate	198.63

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Upon publication of the final results of this administrative review, the cash deposit rate for all shipments by Mei Wei or Tak Fat of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, will be the PRC-wide rate stated in the final results of this administrative review, as provided for by section 751(a)(1) of the Act. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 10 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). In addition, pursuant to 19 CFR 351.310, within 10 days of the date of publication of this notice, interested parties may request a public hearing on arguments raised in the case and rebuttal briefs. Any hearing, if requested, will be held two days after the date for submission of rebuttal

briefs, that is, 17 days after the date of publication of these preliminary results. The Department will publish the final results of this administrative review with respect to subject merchandise exports by Mei Wei and Tak Fat, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing, not later than 120 days after the date of publication of these preliminary results, unless this time period is extended.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 23, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–16510 Filed 6–29–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062600LE]

StormReady Application Form

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 29, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at lengelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Richard Roberts, OFA 1x1, Station 8118, NOAA, 1305 East-West Highway, Silver Spring, MD 20910 (301–713–3525, ext. 115).

SUPPLEMENTARY INFORMATION:

I. Abstract

StormReady is a community-recognition program for emergency management preparedness, and it is used to provide guidance on hazardous weather operations and to provide an incentive to officials. The StormReady Application Form is used by localities to apply for recognition. The National Weather Service will use the information on the application to determine whether the community has met all of the criteria for recognition. This information collection was recently approved by the Office of Management and Budget on an emergency basis, and this Notice solicits comments on the agency's plan to ask for a three-year approval under the Paperwork Reduction Act.

II. Method of Collection

Paper application forms are submitted. Copies of the form will be made available electronically at ''www.nws.noaa.gov/stormready''. The agency is investigating ways to allow submissions via the Internet.

III. Data

OMB Number: 0648–0419.
Form Number: None.
Type of Review: Regular submission.
Affected Public: State, local, or tribal government.
Estimated Number of Respondents: 40.
Estimated Time Per Response:1 hour.
Estimated Total Annual Burden Hours: 40.
Estimated Total Annual Cost to Public: $40.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: June 23, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–16538 Filed 6–29–00; 8:45 am]

BILLING CODE 3510–KE

DEPARTMENT OF COMMERCE

[I.D. 062600A]

Submission for OMB Review; Proposed Information Collection; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Southwest Region Logbook Family of Forms.
Agency Form Number(s): None.
OMB Approval Number: 0648–0214.
Type of Request: Regular submission.
Burden Hours: 2,314.
Number of Respondents: 160.
Average Hours Per Response: In the Pacific pelagic fishery: 5.25 minutes/day for a logbook, 3 minutes/trip for a pre-trip notification, 1 hour for an observer placement meeting, 4 hours per claim for lost fishing time, 4 hours for installation of a vessel monitoring system (VMS), 2 hours per year for VMS maintenance, and 24 seconds/day for automatic VMS monitoring. In the crustacean fishery: 3 min./trip for a pre-landing or pre-offloading notification, 5 minutes per day for a logbook, 3 minutes for an at-sea catch report, 3 minutes for a pre-season VMS notification, 24 seconds a day for automatic VMS monitoring, and 5 minutes for sales reports.

In the bottomfish and seamount groundfish fishery, 2 hours for a protected species interaction report. In the precious coral fishery, 7 minutes a day for a logbook and 5 minutes per sales report. In the experimental fishing program, 4 hours per report.

Needs and Uses: Participants in Federally-managed fisheries in the

Western Pacific are required to provide certain information about their fishing activities. The information is needed for the management of the fishery.

Affected Public: Businesses and other for-profit organizations, and individuals.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at

lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: June 23, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–16537 Filed 6–29–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 062700A]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council will hold meetings of its Marine Reserves Advisory Panel (AP), Rock Shrimp AP, and Dolphin Wahoo AP in Charleston, South Carolina.

DATES: These meetings will be held July 26–August 3, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: These meetings will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: 843–571–1000.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: (843) 571–4366; fax: (843) 769–4520; email: kim.iverson@noaa.gov.

SUPPLEMENTARY INFORMATION: The meetings are scheduled as follows:

Wednesday, July 26, 2000, 8:30–5 p.m. and Thursday, July 27, 2000, 8:30–3 p.m.—-The Marine Reserves AP.

The Marine Reserves AP will meet to review comments received during the informal meeting and public scoping process and will discuss the advisory panel's recommendation as to which direction the Council should move regarding the use of marine reserves as a management tool.

Tuesday, August 1, 2000, 1:30–5 p.m. and Wednesday, August 2, 2000, 8 a.m.–12 noon—-The Rock Shrimp AP.

The Rock Shrimp AP will meet to review landings and permit information for the rock shrimp fishery and discuss issues and develop preliminary recommendations regarding development of a limited entry system for the fishery.

Wednesday, August 2, 2000, 1:30–5 p.m. and Thursday, August 3, 2000, 8 a.m.–12 noon—The Dolphin Wahoo AP.

The Dolphin Wahoo AP will meet to review public comments received during the public hearing and informal review process and provide the Council with panel member comments on the public hearing draft of the Dolphin and Wahoo Fishery Management Plan. The public comment period for this document ends on July 7, 2000.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, these issues may not be the subject of formal Council action during these meetings. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (See **ADDRESSES**) by July 17, 2000.

Dated: June 27, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–16636 Filed 6–29–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061300A]

Marine Mammals; File No. 981–1578

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Peter L. Tyack, Ph.D., Woods Hole Oceanographic Institution, Biology Department, 46 Water Street, Woods Hole, MA 02543, has applied in due form for a permit to take several species of marine mammals for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before July 31, 2000.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

The applicant is requesting to harass the species of cetaceans listed below in the North Atlantic and Mediterranean Sea during the course of research on the impact of noise on marine mammals. The research will involve a variety of potential takes by harassment including: close approach for tagging; attachment of tags; focal follows; and playbacks of sound. In addition, the applicant requests authorization to import to the U.S. and export to foreign countries skin samples collected during the course of suction-cup tag retrieval. Incidental harassment of all species of cetaceans may occur through vessel approach, photographic identification and behavioral research. The research will be carried out over a five-year period.

The following species may be taken by harassment during the course of the research: Minke whale (*Balaenoptera acutorostrata*), Sei whale (*Balaenoptera borealis*), Blue whale (*Balaenoptera musculus*), Finback whale (*Balaenoptera physalus*), Humpback whale (*Megaptera novaeangliae*), Common dolphin (*Delphinus delphis*), Short-finned pilot whale (*Globicephala macrorhynchus*), Long-finned pilot whale (*Globicephala melas*), Risso's dolphin (*Grampus griseus*), Killer whale (*Orcinus orca*), False killer whale (*Pseudorca crassidens*), Striped dolphin (*Stenella coeruleoalba*), Rough-toothed dolphin (*Steno bredanensis*), Bottlenose dolphin (*Tursiops truncatus*), Pygmy sperm whale (*Kogia breviceps*), Dwarf sperm whale (*Kogia simus*), Sperm whale (*Physeter macrocephalus*), Bottlenose whale (*Hyperoodon ampullatus*), Blainville's beaked whale (*Mesoplodon densirostris*), Gervais' beaked whale (*Mesoplodon europaeus*), Sowerby's beaked whale (*Mesoplodon bidens*), True's beaked whales (Mesoplodon mirus), and Cuvier's beaked whale (*Ziphius cavirostris*).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), NMFS is preparing an environmental assessment which will be available from the Chief, Permits and Documentation Division, at the address listed above.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 26, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–16536 Filed 6–29–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 000623194–0194–01]

RIN 0660–XX09

Notice, Request for Comments on Ultrawideband Systems Test Plan

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice, request for comments.

SUMMARY: The Institute for Telecommunication Sciences (ITS) and the Office of Spectrum Management (OSM) of the National Telecommunications and Information Administration (NTIA) invite interested parties to review and comment on a proposed test plan for developing accurate, repeatable, and practical methods for characterizing the very narrow pulses (and pulse trains) of ultrawideband (UWB) systems and collecting the information to estimate or measure the potential for UWB systems to interfere with existing (narrowband, channelized, band-limited, and wideband) radio communications or sensing systems. This test plan covers the effects of UWB signals on selected Federal radio receivers, but does not include effects on Global Positioning System (GPS) receivers.[1]

The UWB test plan will be posted on the NTIA homepage at: <www.ntia.doc.gov/osmhome/uwbtestplan>. Interested parties may also obtain a copy of the test plan from ITS or OSM.

DATES: Interested parties are invited to submit comments on the test plan no later than July 17, 2000.

SUBMISSION OF DOCUMENTS: The Department invites the public to submit comments on the UWB test plan in paper or electronic form. Comments may be mailed to Paul Roosa, Office of Spectrum Management, National Telecommunications and Information Administration, Room 4099 HCHB, 1401 Constitution Ave., NW, Washington, DC 20230. Paper submissions should include a diskette in ASCII, WordPerfect (please specify version) or Microsoft Word (please specify version) format. Diskettes should be labeled with the name and organizational affiliation of the filer, and the name and version of the word processing program used to create the document.

In the alternative, comments may be submitted electronically to the following electronic mail address: <uwbtestplan@ntia.doc.gov>. Comments submitted via electronic mail should also be submitted in one or more of the formats specified above.

FOR FURTHER INFORMATION CONTACT: Dr. William Kissick, Institute for Telecommunication Sciences, telephone: (303) 497–7482; or electronic mail: <billk@its.bldrdoc.gov>; or Paul Roosa, National Telecommunications and Information Administration, telephone:(202) 482–1559; or electronic mail: <proosa@ntia.doc.gov>. Media enquiries should be directed to the Office of Public Affairs, National Telecommunications and Information Administration, at (202) 482–7002.

SUPPLEMENTARY INFORMATION: Recent advances in microcircuit and other technologies have resulted in the development of pulsed radar and communications systems with very narrow pulse widths and very wide bandwidths. These ultrawideband (UWB) systems have instantaneous bandwidths of at least 25 percent of the center frequency of the device. UWB systems can perform a number of useful telecommunication functions that make them very appealing for both the commercial and government applications. These systems have very wide information bandwidths, are capable of accurately locating nearby objects, and can use processing technology with UWB pulses to ''see through objects'' and communicate using multiple propagation paths. The bandwidths of UWB devices, however, are so wide that, although their output powers in many cases are low enough to be authorized under the unlicensed device regulations of the NTIA and the Federal Communications Commission (FCC), some of the systems emit signals in bands in which such transmissions are not permitted because of potential harmful effects on critical radiocommunication services.

The NTIA and the FCC have developed spectrum management procedures for unlicensed devices (conventional electronic devices with narrow bandwidths), but these procedures do not currently address UWB devices, which were unknown when these procedures were adopted. Thus, NTIA and the FCC must work closely with each other, current users of the radio spectrum, and the UWB community to determine how UWB devices can operate without adversely impacting existing radio-

[1] NTIA is preparing a separate test plan to measure the effects of UWB signals on GPS receivers. NTIA intends to post that UWB–GPS test plan on the NTIA homepage in late-July and will seek public comment at that time.

communication systems. The difficulty in measuring both the UWB signal characteristics and their effect on other devices exacerbates the difficulties of this coordination. The pulses are very narrow, often in the low nanosecond or picosecond range, requiring new measurement techniques and equipment to measure the signal characteristics accurately. Further, the interference effects of very narrow pulses with high repetition rates and aggregations of similar devices, such as could occur in some applications of UWB technology, are not well understood.

The NTIA has therefore undertaken this measurement program to develop information to help address the implementation and operation of UWB systems. The objectives of this test plan are to:

1. Develop measurement procedures that use commercial-off-the-shelf (COTS) measurement equipment to accurately portray UWB emission characteristics;
2. Observe effects of UWB signals in the intermediate frequency (IF) sections of selected receivers, and determine the susceptibility of conventional radio receivers to UWB emissions;
3. Provide a basis for development of a one-on-one interference analysis procedure to determine the minimum needed separation distances or the maximum peak and average effective isotropic radiated power (EIRP) of UWB devices to ensure compatibility;
4. Perform a limited set of measurements to validate the one-on-one interference analysis (above) between UWB signals and selected Federal radio receivers, particularly radio navigation and safety-of-life systems; and
5. Investigate how multiple UWB emissions add together within a single receiver.

Kathy D. Smith,

Chief Counsel.

[FR Doc. 00–16576 Filed 6–29–00; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF DEFENSE

Office of the Secretary; Meeting of the DoD Healthcare Quality Initiative Review Panel

AGENCY: Department of Defense.

ACTION: An executive/administration meeting for DoD Healthcare Quality Initiatives Review Panel has been scheduled for July 6 & 7, 2000.

SUMMARY: This notice set forth the meeting of the DoD Healthcare Quality Initiatives Review Panel. Notice of meeting is required under The Federal Advisory Committee Act (Pub. L. 92–463).

DATES: July 6 & 7, 2000.

ADDRESSES: Sheraton Crystal City, 1800 Jefferson Davis Hwy., Arlington, VA 22202.

TIME: July 6th, 5:30 p.m. to 8:30 p.m.; July 7th, 8:00 a.m. to 5:30 p.m.

FOR FURTHER INFORMATION CONTACT: For information please contact Gia Edmonds at (703) 933–8325.

Dated: June 23, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–16578 Filed 6–29–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary; Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Unconventional Nuclear Warfare Defense will meet in closed session on July 10–11, 2000, at Strategic Analysis, Inc., 3601 Wilson Boulevard, Suite 500, Arlington, VA. This Task Force will determine the adequacy of DoD's ability to detect, identify, respond, and prevent unconventional nuclear attacks by terrorists or subnational entities, and the appropriate role(s) and capability of DoD to provide protection against unconventional nuclear attacks in support of homeland defense.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will review and evaluate the Department's ability to provide information

In accordance with Section 10(d) of the Federal Advisory Committee Act, P.L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these Defense Science Board meetings, concern matters listed in 5 U.S.C. § 552b(c)(1) (1994), and that accordingly these meeting will be closed to the public.

Dated: June 22, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–16577 Filed 6–29–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF EDUCATION

Rehabilitation Services Administration

AGENCY: Department of Education.

ACTION: Notice of Proposed Competitive Preference for Fiscal Year 2001 for the Rehabilitation Long-Term Training, and Rehabilitation Continuing Education Program.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services proposes adding competitive preference points to the competitions for the Rehabilitation Long-Term Training, and Rehabilitation Continuing Education Program for fiscal year 2001. This notice contains proposed language for adding competitive preference points. This notice does not invite applications.

DATES: Comments must be received on or before July 31, 2000.

ADDRESSES: All comments concerning the addition of competitive preference points should be addressed to Mary C. Lynch, U.S. Department of Education, 400 Maryland Avenue, SW, room 3322, Switzer Building, Washington, DC 20202–2649.

Comments may also be sent through the Internet: mary_lynch@ed.gov

FOR FURTHER INFORMATION CONTACT: Mary Lynch. Telephone: (202) 205–8291.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8399. Internet: Mary—Lynch@ed.gov

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.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed notice. We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed notice. Please let us know of any further opportunities we should take to reduce potential costs or increase

potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in Room 3322, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 9 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed language. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

This proposed language supports the National Education Goal that calls for every American to possess the skills necessary to compete in a global economy.

Proposed Additional Selection Criterion

The Assistant Secretary will use the selection criteria in 34 CFR 385.31, 386.20 and 389.30 to evaluate applications under this program. The maximum score for all the criteria is 100 points; however, the Assistant Secretary will also use the following criterion so that up to an additional ten points may be earned by an applicant for a total possible score of 110 points.

Within the Rehabilitation Long-Term Training, and Rehabilitation Continuing Education Program, we will give the following competitive preference under 34 CFR 75.105(c)(2)(i) to applications that are otherwise eligible for funding under this competition.

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this competition. In determining the effectiveness of those strategies, we will consider the applicant's prior success, as described in the application, in employing and advancing in employment qualified individuals with disabilities.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use PDF you must have Adobe Acrobat Reader, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, D.C. area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

APPLICABLE PROGRAM REGULATIONS: 34 CFR Part 385, 386 and 389.

Program Authority: 29 U.S.C. 774.

(Catalog of Federal Domestic Assistance Number: 84.129 and 84.264, the Rehabilitation Long-Term Training, and Rehabilitation Continuing Education Program.)

Dated: June 23, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–16579 Filed 6–29–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Notice of Availability of the Final Environmental Impact Statement for the Proposed JEA Circulating Fluidized Bed Combustor Project at Jacksonville, FL

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of the Final Environmental Impact Statement (EIS) for the JEA Circulating Fluidized Bed Combustor Project (DOE/EIS–0289), at Jacksonville, Florida. The Final JEA EIS analyzes the environmental impacts that could result from construction and operation of a 297.5 megawatt-electric, coal- and petroleum coke-fired, circulating fluidized bed combustor and boiler to repower an existing steam turbine at JEA's Northside Generating Station. The proposed Federal action is cost-shared funding of approximately $73.1 million (about 24 percent of the total estimated cost of $309 million) for construction of the combustor and boiler and for a 24-month period of demonstration testing of the technology. The proposed project is expected to demonstrate technology for the cost-effective reduction of nitrogen oxide, sulfur dioxide, and particulate emissions, while producing power more efficiently and at less cost than conventional coal combustion technologies. Information and experience developed from this project would provide the basis for demonstrating the potential of utility scale, atmospheric pressure, circulating fluidized bed technology as a viable alternative to conventional coal-fired power plant technologies. DOE may issue a Record of Decision no sooner than 30 days after the U.S. Environmental Protection Agency publishes a Notice of Availability of the Final EIS in the **Federal Register**.

ADDRESSES: Requests for copies of the Final EIS or other information about the proposed action should be addressed to: Ms. Lisa Hollingsworth, JEA NEPA Document Manager, National Energy Technology Laboratory, U.S. Department of Energy, 3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV 26507–0880; by telephone at 304–285–4992; by fax at 304–285–4403; by leaving a message at 1–800–276–9851; or by electronic mail at lisa.hollingsworth@netl.doe.gov. The Final JEA EIS will be available under the DOE NEPA Analyses link from the DOE NEPA Web at http://tis.eh.doe.gov/nepa/.

FOR FURTHER INFORMATION CONTACT: For general information on the DOE NEPA process, please contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. Ms. Borgstrom may be contacted by calling 202–586–4600 or by leaving a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: The JEA EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality NEPA regulations (40 CFR Parts 1500–1508), and the DOE NEPA regulations (10 CFR Part 1021).

A Notice of Intent (Notice) to prepare an environmental impact statement for the proposed JEA Circulating Fluidized Bed Combustor Project and hold a public scoping meeting was published in the **Federal Register** on Thursday, November 13, 1997 (62 FR 60889). The Notice invited oral and written comments and suggestions on the proposed scope of the environmental impact statement, including

environmental issues and alternatives, and invited public participation in the National Environmental Policy Act process. A public scoping meeting was announced and held on December 3, 1997, at Jacksonville, FL. Comments and feedback received during the public scoping process were used to guide development of the environmental analyses included in this final JEA EIS. The availability of the draft environmental impact statement for the Proposed JEA Circulating Fluidized Bed Combustor Project was announced in the **Federal Register** on Wednesday, August 25, 1999 (64 FR 46363). The Notice invited oral and written comments and provided details on the public hearing. A public hearing was held at the North Campus of the Florida Community College in Jacksonville, Florida, on September 30, 1999. Comments received during the comment period and at the public hearing have been addressed in the Final JEA EIS.

DOE proposes to provide funding to JEA for supporting the construction and operation of a combustor and boiler to repower a steam turbine and generator that have been out of service since 1983 at JEA's Northside Generating Station. As part of this proposed action (the preferred alternative identified in the EIS), the Final JEA EIS evaluates plans by JEA to repower a second, currently operating, steam turbine without cost-shared funding from DOE. In addition to analyzing the environmental impacts of the proposed action, the Final JEA EIS analyzes the potential impacts of the No-Action Alternative. Under the No-Action Alternative, three scenarios that reasonably could be expected to be pursued by JEA in the absence of DOE funding are analyzed. The Final JEA EIS compares the environmental impacts that could be expected to occur from repowering the two steam turbines with new circulating fluidized bed combustors with the impacts that would be likely from each of the three scenarios under the No-Action Alternative.

The principal focus of the JEA EIS is on evaluating impacts from construction and operation of the proposed project on the primary areas of concern: human health, air quality, surface water, groundwater, ecological resources, socioeconomic resources (including environmental justice), noise, and traffic. In addition, impacts on land use, floodplains, wetlands, waste management, and cultural resources are also considered.

DOE has distributed copies of the Final JEA EIS to appropriate Members of Congress, State and local agencies and government officials in Florida, Federal agencies, and other interested parties. Copies of the document may be obtained by contacting DOE as provided in the section of this notice entitled **ADDRESSES.** Copies of the Final JEA EIS are also available for inspection at the locations identified below:

(1) U.S. Department of Energy, Freedom of Information Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.
(2) U.S. Department of Energy, National Energy Technology Laboratory, 3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV 26507–0880.
(3) Highlands Branch Library, 1826 Dunn Avenue, Jacksonville, FL 32218.

DOE may issue a Record of Decision (ROD) on whether to provide cost-shared funding for the proposed JEA Circulating Fluidized Bed Combustor Project no sooner than 30 days after the U.S. Environmental Protection Agency publishes a Notice of Availability of the Final EIS in the **Federal Register**.

Issued in Washington, D.C., this 26th day of June 2000.

Robert S. Kripowicz,

Principal Deputy Assistant Secretary for Fossil Energy.

[FR Doc. 00–16558 Filed 6–29–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex Plant

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), Pantex Plant, Amarillo, Texas. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE AND TIME: Tuesday, July 25, 2000: 1:30 p.m.–5:30 p.m.

ADDRESSES: The Wellington Room, I–40 & Georgia, Amarillo, Texas.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3125.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to advise the Department of Energy and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1:30 Agenda Review/Approval of Minutes

1:45 Co-Chair Comments

2:00 Task Force/Subcommittee Reports

2:30 Ex-Officio Reports

3:00 Updates—Concurrence Reports—DOE

3:30 Break

3:45 Presentation (To Be Decided)

4:45 Public Comments

5:00 Closing Comments

5:30 Adjourn

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 Jerry Johnson's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and every reasonable provision will be made to accommodate the request in the agenda. The Deputy 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.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10 p.m. Monday through Thursday; 7:45 am to 5 p.m. on Friday; 8:30 am to 12 noon on Saturday; and 2 p.m. to 6 p.m. on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9 am to 7 pm on Monday; 9 am to 5 p.m. Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on June 26, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–16554 Filed 6–29–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. PP–226]

Application for Presidential Permit Brownsville Public Utilities Board

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Brownsville Public Utilities Board (BPUB) has applied for a Presidential permit to construct, connect, operate and maintain double-circuit electric transmission facilities across the U.S. border with Mexico.

DATES: Comments, protests, or requests to intervene must be submitted on or before July 31, 2000.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Coal & Power Import and Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael T. Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: The construction, operation, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038.

On June 23, 2000, BPUB, the municipal electric utility of the City of Brownsville, Texas, filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) for a Presidential permit. BPUB proposes to construct a double circuit 138,000 volt (138-kV) transmission line, on wood poles, from its existing Silas Ray Power Plant in Brownsville, Texas, and extending approximately 3,000 feet to the U.S.-Mexico border. At the border the transmission circuits would interconnect with similar facilities of the Comision Federal de Electricidad (CFE), the national electric utility of Mexico, and continue an additional 1.7 miles into Matamoros, Tamaulipas, Mexico. As an instrumentality of the State of Texas, BPUB is not subject to section 202(e) of the Federal Power Act (FPA), and therefore, not required to submit an application to DOE for authorization to export electric energy to Mexico.

BPUB is proposing to develop this project in three phases. In phase one, BPUB would energize only one of the two 138-kV circuits and operate it at 69-kV. This would give BPUB the ability to transmit up to 100 megawatts (MW) of power to Mexico. In phase two, BPUB would energize both 138-kV circuits at 69-kV by installing a circuit breaker and related relaying equipment (by approximately the year 2002). This modification would give BPUB the ability to transmit up to 200 MW of electric power to Mexico. In phase three, BPUB would convert all 69-kV facilities at Silas Ray to 138-kV (by approximately the year 2005) by replacing power transformers, circuit breakers, switches, and related equipment within the existing switchyard. BPUB would then operate both circuits at 138-kV and be capable of transmitting up to 400 MW to Mexico.

In its application, BPUB asserts that the proposed international transmission facilities will be operated in such a way that the BPUB and CFE systems will not be operated in parallel.

Since restructuring of the electric power industry began, resulting in the introduction of different types of competitive entities into the marketplace, DOE has consistently expressed its policy that cross-border trade in electric energy should be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. DOE has stated that policy in export authorizations granted to entities requesting authority to export over international transmission facilities. Specifically, DOE expects transmitting utilities owning border facilities to provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the FPA and articulated in Federal Energy Regulatory Commission Order No. 888 (Promotion Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public utilities; FERC Stats. & Regs. ¶ 31,036 (1996)), as amended. In furtherance of this policy, on July 27, 1999, (64 FR 40586) DOE initiated a proceeding in which it noticed its intention to condition existing and future Presidential permits, appropriate for third party transmission, on compliance with a requirement to provide non-discriminatory open access transmission service. That proceeding is not yet complete. However, in this docket DOE specifically requests comment on the appropriateness of applying the open access requirement on BPUB's proposed facilities.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Additional copies of such petitions to intervene or protests also should be filed directly with: John S. Bruciak, Brownsville Public Utilities Board, 1425 Robin Hood Drive, P.O. Box 3270, Brownsville, TX 78520.

Before a Presidential permit may be issued or amended, the DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. In addition, DOE must consider the environmental impacts of the proposed action (*i.e.,* granting the Presidential permit, with any conditions and limitations, or denying the permit) pursuant to NEPA. DOE also must obtain the concurrence of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above. In addition, the application may be reviewed or downloaded from the Fossil Energy Home Page at: http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Electricity'' from the options menu, and then ''Pending Proceedings.''

Issued in Washington, DC, on June 27, 2000.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex Office of Fossil Energy.

[FR Doc. 00–16556 Filed 6–29–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments on the proposed reinstatement and three-year extension of Form EIA–457A–G, ''Residential Energy Consumption Survey (RECS)''.

DATES: Written comments must be submitted on or before August 29, 2000. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Michael T. Laurence, Office of Energy Markets and End-Use, Energy Consumption Division, EI–63, Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585–0660. Alternatively, Michael T. Laurence may be reached by phone at 202–586–2453, by e-mail michael.laurence@eia.doe.gov, or by FAX 202–586–0018.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Michael T. Laurence at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the Department of Energy Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the Energy Information Administration (EIA) to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under Sections 3507(h)(1) and 3506(c) of the Paperwork Reduction Act of 1995.

The Residential Energy Consumption Survey (RECS) is a periodic survey of U.S. households to collect energy consumption and expenditures data and track changes over time. The data are widely used throughout the government and the private sector for policy analysis and are made available to the public in a variety of publications, electronic products, and electronic data files. Results from the survey are presented in both printed form (*e.g.,* U.S. Department of Energy, Energy Information Administration, *A Look at Residential Consumption in 1997,* November 1999, DOE/EIA–0632(97)) and at EIA's web site at http://www.eia.doe.gov/emeu/recs/contents.html.

II. Current Actions

This is a reinstatement of OMB No. 1905–0092 that expired March 31, 2000. The reinstatement will be for a three-year period with an expiration date of January 31, 2004. No significant changes in the RECS are being implemented. Due to funding restraints, the RECS is conducted on a quadrennial schedule, a schedule established with the 1997 RECS. The use of Computer-Assisted Personal Interviewing (CAPI), a technology implemented with the 1997 RECS, will be continued.

The content of the survey questionnaires to be used in the 2001 RECS will be substantially the same as those used in the 1997 RECS. Minor wording changes may be made in the interest of clarity. Some questions that yielded little useful data will be deleted, while questions dealing with new energy-consuming appliances will be added.

The only notable methodological change will be the timing of the Rental Agents, Landlords, and Apartment Managers Survey (Form EIA–457C). Instead of being conducted after the household interview (Form EIA–457A), it will be conducted either prior to, or concurrently with, the interviews at the sampled households living in multi-unit buildings. The change in the time of the collection of energy-related data from the lessors of housing units included in the RECS will ease the burden on household respondents, who may not know about the energy aspects of the apartments they rent, and will also improve the quality of the household data.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

B. Can the information be submitted by the due date?

C. Public reporting burden for this collection is estimated to average 30 minutes per response for Form EIA–457A, Household Questionnaire; 20 minutes per response for Form EIA–457B, Mail version of the Household Questionnaire; 15 minutes per response for Form EIA–457C, Rental Agents, Landlords, and Apartment Managers; 30 minutes per response for Form EIA–457D, Household Bottle Gas (LPG or Propane) Usage; 30 minutes per response for Form EIA–457E, Household Electricity Usage; 30 minutes per response for Form EIA–457F, Household Natural Gas Usage; and 30 minutes per response for Form EIA–457G, Household Fuel Oil or Kerosene Usage. The estimated burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose and provide the information. Please comment on the accuracy of the estimate.

D. The agency estimates that the only costs to the respondents are for the time it will take them to complete the collection. Please comment if respondents will incur start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection.

E. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

F. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Is the information useful at the levels of detail indicated on the form?

B. For what purpose(s) would the information be used? Be specific.

C. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) and 3506(c) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, D.C. June 26, 2000.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 00–16555 Filed 6–29–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: Proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments on the proposed three-year extension to the Form FE–781R ''Annual Report of International Electrical Export/Import Data.''

DATES: Written comments must be submitted on or before August 29, 2000. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Steven Mintz, Office of Coal and Power Imports and Exports, FE–27, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Mr. Mintz may be reached by phone at 202–586–9506; by e-mail (steven.mintz@hq.doe.gov), or by FAX (202–586–6050).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Steven Mintz at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background

II. Current Actions

III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the Department of Energy Organization Act (Pub. L. 95–91), 42 U.S.C. 7101 *et seq.*) require the Energy Information administration (EIA) to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA Any Comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under Sections 3507(h)(1) and 3506(c) of the Paperwork Reduction Act of 1995.

The Office of Coal and Power Imports and Exports (Fossil Energy) will monitor the levels of electricity imports and exports and issue summary tabulations in a staff Annual Report. The Office will also provide monthly tabulations of these data for use in the Energy Information Administration's Monthly Energy Review and Annual Energy Review. This information will be kept in the public docket files and will be available for public inspection and copying.

II. Current Actions

A clearance package will be submitted to the Office of Management and Budget requesting approval of a three-year extension with no change of the currently-approved collection.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

B. Can the information be submitted by the due date?

C. Public reporting burden for this collection is estimated to average 10 hours per response. The estimated burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose and provide the information. Please comment on the accuracy of the estimate.

D. The agency estimates that the only costs to the respondents are for the time it will take them to complete the collection. Please comment if respondents will incur start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection.

E. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

F. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User

A. Is the information useful at the levels of detail indicated on the form?

B. For what purpose(s) would the information be used? Be specific.

C. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) and 3506(c) of the Paperwork Reduction Act

of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, D.C., June 26, 2000.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 00–16557 Filed 6–29–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–86–000]

Boylston Municipal Light Department, et al., Complainants, v. Vermont Yankee Nuclear Power Corporation, et al., Respondents; Notice of Filing

June 26, 2000.

Take notice that on June 22, 2000, the Boylston Municipal Light Department and 21 other Secondary Purchasers of power from the Vermont Yankee Nuclear Generating Station (Secondary Purchasers), tendered for filing a complaint against Vermont Yankee Nuclear Power Corporation (VY) and the seven non-Vermont Sponsors of VY from whom the Secondary Purchasers obtain their entitlements to VY capacity and energy. The complaint asserts that VY is violating the terms of the contractual formula rate by currently collecting in its charges to the Sponsors (who in turn pass through a share of those charges to the Secondary Purchasers) certain transaction expenses incurred in connection with the proposed sale of the VY plant. The complaint requests refunds of all such transaction costs that the Secondary Purchasers have paid. The complaint also asserts that upon consummation of the proposed plant sale, the Secondary Purchasers will have contributed more than their contractual share of VY's total costs relating to decommissioning of the VY plant, and requests refunds of such excess contributions upon consummation of the plant sale. The Secondary Purchasers also request that the complain proceedings be consolidated with the review of the proposed plant sale transaction under Federal Power Act Sections 203 and 205 in Docket Nos. EC00–46–000, ER00–1027–000, ER00–1028–000, ER00–1029–000, ER00–1030–000, and EL00–33–000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 14, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Answers to the complaint shall also be due on or before July 14, 2000.

David P. Boergers,

Secretary.

[FR Doc. 00–16573 Filed 2–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–3094–001, ER99–3092–001]

Central Maine Power Company; Notice of Filing

June 26, 2000.

Take notice that on June 9, 2000, Central Maine Power Company (CMP), tendered for filing a compliance filing pursuant to an April 26, 2000, Letter Order issued in the above-referenced dockets.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests shuld be filed on or before July 7, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16574 Filed 6–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–349–000]

Dominion Transmission, Inc.; Notice of Section 4 Filing

June 26, 2000.

Take notice that on June 16, 2000, Dominion Transmission, Inc., tendered for filing pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering services currently being provided on specified uncertificated lines in Barbour and Ritchie Counties, West Virginia. Dominion states that the uncertificated lines are being abandoned by sale to Hope Gas, Inc. and Commonwealth Energy Company.

Any person desiring to be heard or to protest this 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 Sections 385.214 and 385.211 of the commission's Rules and regulations. Pursuant to Section 154.210 of the commission's Regulations, all such motions or protests must be filed no later than June 30, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public reference Room.

David P. Boergers,

Secretary.

[FR Doc. 00–16572 Filed 6–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2503–057]

Duke Energy Corporation; Notice of Site Visit To Keowee-Toxaway Project

June 26, 2000.

Take notice that Commission staff will hold a site visit on Thursday, July 6, 2000 from approximately 1 p.m. to 4 p.m. with representatives of Duke Energy Corporation (licensee) and the Keowee Key Property Owners Association (KKPOA) regarding the licensee's proposed leasing of 11.34 acres of project lands and waters to the KKPOA for existing and proposed marina facilities within Keowee Key development, and established residential community with single family homes and condominium units located on Lake Keowee in Oconee County, South Carolina.

The purpose of the site visit is to enable Commission staff responsible for preparing the environmental assessment of the subject proposal to view the project area's existing facilities, and to inspect the three sites proposed to be developed with new cluster docks for Keowee Key residents. Officials of state and federal resource agencies and representatives of concerned non-governmental organizations are invited to attend.

Existing marina facilities at Keowee Key currently include 12 cluster docks with a total of 185 boat slips, 1 boat ramp, and 2 commercial gasoline sales docks. Additional marina facilities proposed to be constructed there include 2 cluster docks with a total of 40 slips at Chestnut Point, 2 cluster docks with a total of 30 slips at Laurel Park, and 1 cluster dock with 20 slips at Leisure Trail.

Persons planning to attend the site visit should notify Mr. Joe Hall, Lake Management Representative, Duke Power Company, Charlotte, NC at (704) 382–8576 and should provide their own transportation to and from Keowee Key. All participants will meet at the KKPOA conference center at Keowee Key, located at the intersection of Highways 130 and 183, approximately 9 miles from the town of Seneca.

If you have any questions concerning this matter, please contact Jim Haimes, EA Coordinator for the Commission, at (202) 219–2780.

David P. Boergers,

Secretary.

[FR Doc. 00–16569 Filed 6–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2535–000]

EMW Marketing Corporation; Notice of Issuance of Order

June 26, 2000.

EMW Marketing Corporation (EMW) submitted for filing a rate schedule under which EMW will engage in wholesale electric power and energy transactions as a marketer. EMW also requested waiver of various Commission regulations. In particular EMW requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by EMW.

On June 22, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by EMW should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, EMW is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of EMW's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 24, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16564 Filed 6–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–218–021]

Koch Trading Trading Inc; Notice of Filing

June 26, 2000.

Take notice that on June 21, 2000, Koch Energy Trading Inc. (KET), tendered for filing a notice of change in status, informing the Commission that KET's parent company Koch Energy, Inc. (Koch) has signed an agreement to form a partnership with Entergy Corporation (Entergy) that will own KET. KET also filed a code of conduct in accordance with the Commission's policies regarding transactions between power marketers and their public utility affiliates.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 12, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16571 Filed 6–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2448–000]

LSP-Nelson Energy, LLC; Notice of Issuance of Order

June 26, 2000.

LSP-Nelson Energy, LLC (LSP-Nelson) submitted for filing a rate schedule under which LSP-Nelson will engage in wholesale electric power and energy transactions as a marketer. LSP-Nelson also requested waiver of various Commission regulations. In particular, NSP-Nelson requested that the Commission grant blanket approval under 18 CFR part 35 of all future issuances of securities and assumptions of liability by LSP-Nelson.

On June 22, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by LSP-Nelson should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, LSP-Nelson is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of LSP-Nelson's issuance of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 24, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16565 Filed 6–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2313–000]

NRG Energy Center Paxton, Inc., Notice of Issuance of Order

June 26, 2000.

NRG Energy Center Paxton, Inc. (NRG) submitted for filing a rate schedule under which NRG will engage in wholesale electric power and energy transactions as a marketer. NRG also requested waiver of various Commission regulations. In particular, NRG requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by NRG.

On June 23, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by NRG should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, NRG is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of NRG's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 24, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16566 Filed 6–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–96–001]

P&L Coal Holdings Corporation, Citizens Power LLC, Citizens Power Holdings One, LLC and FC Energy Finance I, Inc.; Notice of Filing

June 26, 2000.

Take notice that on June 20, 2000, P&L Coal Holdings Corporation, Citizens Power LLC, Citizens Power Holdings One, LLC and FC Energy Finance I, Inc., tendered for filing a supplement to the Application for Order Authorizing Sale of Equity Interests filed with the Commission on May 23, 2000 in the above-referenced docket.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 7, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16567 Filed 6–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2268–000]

Pinnacle West Capital Corporation, Arizona Public Service Company and APS Energy Services Company, Inc.; Notice of Issuance of Order

June 26, 2000.

On April 21, 2000, Pinnacle West Capital Corporation [1] (Pinnacle) filed with the Commission an application seeking: (1) Authority for Pinnacle to engage in wholesale sales of electric power at market-based rates, including sales to its affiliates, and sales of ancillary services within the California Independent System Operator Market; (2) authority for Pinnacle to reassign transmission capacity; (3) approval of revised market-based rate tariffs that would allow APS and APSES to transact business with affiliates at market-based rates; and (4) approval of a code of conduct for Pinnacle and proposed modifications to the codes of conduct of APS and APSES.

In its filing, Pinnacle requested certain waivers and authorizations for Pinnacle. In particular, Pinnacle requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liabilities by Pinnacle. On June 20, 2000, the Commission issued an Order Conditionally Accepting For Filing Proposed Market-Based Rate Tariff And Code Of Conduct, And Revised Market-Based Rate Tariffs And Codes Of Conduct (Order), in the above-docketed proceeding.

The Commission's June 20, 2000 Order granted the request for blanket approval under part 34, subject to the conditions found in Ordering Paragraphs (D), (E), and (G):

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Pinnacle should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, Pinnacle is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Pinnacle, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Pinnacle's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 20, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16562 Filed 6–29–00; 8:45 am]

BILLING CODE 6717–01–M

[1] Pinnacle submitted the filing on its own behalf and on behalf of its affiliates, APS and APS Energy Services Company. The Commission's Order collectively referred to these three companies as ''Pinnacle West Companies''. Pinnacle is the parent corporation of both APS and APSES.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–71–001

Reliant Energy Northeast Generation, Inc.; Notice of Filing

June 26, 2000.

Take notice that on June 21, 2000, Reliant Energy Northeast Generation, Inc. (Reliant Energy Northeast), tendered for filing a supplement to its application, submitted in the above-captioned docket on March 31, 2000, under Section 203 of the Federal Power Act. The supplement provided certain information regarding the participants in the transactions for which Reliant Energy Northeast requests authorization.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before July 7, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16568 Filed 6–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2603–000]

Trigen-Syracuse Energy Corporation; Notice of Issuance of Order

June 26, 2000.

Trigen-Syracuse Energy Corporation (Trigen-Syracuse) submitted for filing a rate schedule under which Trigen-Syracuse will engage in wholesale electric power and energy transactions as a marketer. Trigen-Syracuse also requested waiver of various Commission regulations. In particular, Trigen-Syracuse requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Trigen-Syracuse.

On June 22, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Trigen-Syracuse should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Trigen-Syracuse is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the

public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Trigen-Syracuse's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is July 24, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance.

David P. Boergers,

Secretary.

[FR Doc. 00–16563 Filed 2–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–105–000, et al.]

Atlantic City Electric Company, et al.; Electric Rate and Corporate Regulation Filings

June 23, 2000.

Take notice that the following filings have been made with the Commission:

1. Atlantic City Electric Company; Baltimore Gas and Electric Company; Delmarva Power & Light Company; Jersey Central Power & Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; Potomac Electric Power Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; and PJM Interconnection, L.L.C.

[Docket No. EC00–105–000]

Take notice that on June 19, 2000, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, Potomac Electric Power Company, PPL Electric Utilities Corporation, Public Service Electric and Gas Company and PJM Interconnection, L.L.C. filed with the Commission a Joint Application for Authorization to Transfer Jurisdictional Facilities.

Comment date: July 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Dominion Resources, Inc. and Consolidated Natural Gas Company; Dominion Transmission, Inc.

[Docket Nos. EC99–81–003 and MG00–6–002]

Take notice that on June 16, 2000, Dominion Resources, Inc. (Dominion) and Dominion Transmission, Inc. (DTI), the successor of CNG Transmission, Inc. (CNGT), submitted a filing in compliance with the Federal Energy Regulatory Commission's (Commission) May 17, 2000, ''Order on Compliance Filing,'' which imposed conditions on the Commission's approval of the merger of Dominion and Consolidated Natural Gas Company (CNG), and the related ''Order on Standards of Conduct.''

The Applicants request a delayed effective date on their compliance filing whereby the new restrictions on their operations become effective on September 1, 2000. The companies state that they will file an implementation plan by August 1, 2000.

Comment date: August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Entergy Power Marketing Corp. and Koch Energy Trading, Inc.

[Docket No. EC00–106–000]

Take notice that on June 21, 2000, Entergy Power Marketing Corp. and Koch Energy Trading, Inc. submitted a joint application requesting all necessary authorizations under Section 203 of the Federal Power Act to merge, consolidate and organize their jurisdictional facilities to form a new company referred to as Newco.

A copy of this notice was served on the Arkansas Public Service Commission, Louisiana Public Service Commission, Mississippi Public Service Commission, Texas Public Utility Commission and the Council of the City of New Orleans.

Comment date: August 21, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Public Service Corporation

[Docket No. ER00–2893–000]

Take notice that on June 19, 2000, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Service Agreement with Public Service of Colorado providing for transmission service under FERC Electric Tariff, Volume No. 1.

Comment date: July 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Pool

[Docket No. ER00–2894–000]

Take notice that on June 19, 2000, the New England Power Pool (NEPOOL) Participants Committee submitted the Fifty-Sixth Agreement Amending the New England Power Pool Agreement (Fifty-Sixth Agreement), which changes the rate of interest that accrues on the unamortized portion of the Early Restructuring Expense under Section 19.3 of the Restated NEPOOL Agreement.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants and the six New England state governors and regulatory commissions.

Comment date: July 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Southwest Power Pool, Inc.

[Docket No. ER00–2895–000]

Take notice that on June 20, 2000, Southwest Power Pool, Inc. (SPP), tendered for filing executed service agreements for Firm Point-to-Point Transmission Service, Non-Firm Point-to-Point Transmission Service and Loss Compensation Service with Allegheny Energy Supply Company, LLC (Allegheny), NRG Power Marketing Inc. (NRG), and Otter Tail Power Company (Otter Tail), and executed service agreements for Non-Firm Point-to-Point Transmission Service and Loss Compensation Service with Minnesota Power, Inc. (Minnesota Power) (collectively, the Transmission Customers).

SPP seeks an effective date of June 13, 2000 for each of the service agreements with Allegheny, an effective date of May 25, 2000 for each of the agreements with NRG and Minnesota Power, and June 1, 2000, for each of the service agreements with Otter Tail.

Copies of this filing were served upon the Transmission Customers.

Comment date: July 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Madison Gas and Electric Company

[Docket No. ER00–2896–000]

Take notice that on June 20, 2000, Madison Gas and Electric Company (MGE), tendered for filing a service agreement under MGE's Market-Based Power Sales Tariff with Cargill-Alliant LLC.

MGE requests this agreement be effective the date the agreement was filed with the FERC.

Comment date: July 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Louisville Gas and Electric Company/ Kentucky Utilities Company

[Docket No. ER00–2897–000]

Take notice that on June 20, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing an unexecuted unilateral Service Sales Agreement between Companies and Allegheny Energy Supply Company, LLC under the Companies' Rate Schedule MBSS.

Comment date: July 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Louisville Gas and Electric Company/ Kentucky Utilities Company

[Docket No. ER00–2898–000]

Take notice that on June 20, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing an executed unilateral transmission service agreement with DTE Energy Trading, Inc. (DTE). This agreement allows DTE to take firm point-to-point transmission service from LG&E/KU.

Comment date: July 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Energy Service Corporation on behalf of Allegheny Energy Unit 1 and Unit 2, L.L.C.

[Docket No. ER00–2899–000]

Take notice that on June 20, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Unit 1 and Unit 2, L.L.C., tendered for filing Service Agreement No. 1 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Unit 1 and Unit 2, L.L.C., offers generation services.

Allegheny Energy Unit 1and Unit 2, L.L.C., requests a waiver of notice requirements to make service available as of November 27, 1999 to Allegheny Energy Supply Company, LLC.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: July 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–2900–000]

Take notice that on June 20, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Service Agreement No. 77 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of June 19, 2000 to MIECO Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: July 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–2902–000]

Take notice that on June 20, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company), tendered for filing First Revised Service Agreement No. 61 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy requests a waiver of notice requirements to make service available as of March 15, 2000, to Duke Power, a division of Duke Energy Corporation.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: July 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–2901–000]

Take notice that on June 20, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Service Agreement No. 78 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of May 26, 2000 to FPL Energy Power Marketing, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: July 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16559 Filed 6–29–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–102–000, et al.]

Koch Power Louisiana, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

June 22, 2000.

Take notice that the following filings have been made with the Commission:

1. Koch Power Louisiana, L.L.C. and NRG Energy, Inc.

[Docket No. EC00–102–000]

Take notice that on June 14, 2000, Koch Power Louisiana, L.L.C. (KPL) and NRG Energy, Inc. (NRG) tendered for filing an application under section 203 of the Federal Power Act for approval of the transfer of Koch Power, Inc.'s 100 percent membership interest in KPL to NRG's subsidiary NRG South Central Generating LLC. KPL owns an approximately 200 MW electric generating facility in Sterlington, Louisiana. NRG is a majority-owned subsidiary of Northern States Power Company (NSP), a combination electric and gas utility company operating in the states of Minnesota, North Dakota, and South Dakota.

Comment date: July 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Louisville Gas and Electric Company/ Kentucky Utilities Company

[Docket No. ER00–2879–000]

Take notice that on June 19, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an executed unilateral transmission service agreement with Allegheny Energy Supply Company, LLC. (Allegheny). This agreement allows Allegheny to take non-firm point-to-point transmission service from LG&E/KU.

Comment date: July 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Louisville Gas and Electric Company/ Kentucky Utilities Company

[Docket No. ER00–2880–000]

Take notice that on June 19, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an executed unilateral transmission service agreement with Allegheny Energy Supply Company, LLC. (Allegheny). This agreement allows Allegheny to take firm point-to-point transmission service from LG&E/KU.

Comment date: July 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Louisville Gas and Electric Company/ Kentucky Utilities Company

[Docket No. ER00–2881–000]

Take notice that on June 19, 2000 , Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an executed unilateral transmission service agreement with The Legacy Energy Group, LLC (Legacy). This agreement allows Legacy to take non-firm point-to-point transmission service from LG&E/KU.

Comment date: July 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Louisville Gas and Electric Company/ Kentucky Utilities Company

[Docket No. ER00–2882–000]

Take notice that on June 19, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies) tendered for filing an executed unilateral transmission service agreement with The Legacy Energy Group, LLC (Legacy). This agreement allows Legacy to take firm point-to-point transmission service from LG&E/KU.

Comment date: July 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. FirstEnergy System

[Docket No. ER00–2883–000]

Take notice that on June 19, 2000, FirstEnergy System filed Service Agreements to provide Firm Point-to-Point Transmission Service for El Paso Merchant Energy, L.P., the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date for this Service Agreement is June 16, 2000.

Comment date: July 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. FirstEnergy System

[Docket No. ER00–2884–000]

Take notice that on June 19, 2000, FirstEnergy System filed a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for El Paso Merchant Energy, L.P., the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is June 16, 2000.

Comment date: July 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Cedar Brakes I, L.L.C.

[Docket No. ER00–2885–000]

Take notice that on June 19, 2000, Cedar Brakes I, L.L.C. (Cedar Brakes) applied to the Commission for acceptance of Cedar Brakes' Rate Schedule F.E.R.C. No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. Cedar Brakes' application also seeks Commission acceptance and approval of a power purchase agreement with Public Service Electric & Gas Co.

Cedar Brakes intends to engage in wholesale electric power and energy purchases and sales.

Comment date: July 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Virginia Electric and Power Company

[Docket No. ER00–2886–000]

Take notice that on June 19, 2000, Virginia Electric and Power Company (Virginia Power or the Company) tendered for filing the following:

1. Service Agreement for Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Pepco Energy Services designated as Service Agreement No. 282 under the Company's FERC Electric Tariff, First Revised Volume No. 5;

2. Service Agreement for Non-Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Pepco Energy Services designated as Service Agreement No. 283 under the Company's FERC Electric Tariff, First Revised Volume No. 5.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreements, Virginia Power will provide point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of June 19, 2000, the date of filing of the Service Agreements.

Copies of the filing were served upon Pepco Energy Services, the Virginia

State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: July 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Newark Bay Cogeneration Partnership, L.P.

[Docket No. ER00–2887–000]

Take notice that on June 19, 2000, Newark Bay Cogeneration Partnership, L.P. (NBCP) applied to the Commission for acceptance of NBCP's Rate Schedule F.E.R.C. No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

NBCP intends to engage in wholesale electric power and energy purchases and sales.

Comment date: July 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Northeast Utilities Service Company

[Docket No. ER00–2888–000]

Take notice that on June 19, 2000, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement to provide Non-Firm Point-To-Point Transmission Service to Morgan Stanley Capital Group Inc. under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to Morgan Stanley Capital Group Inc.

NUSCO requests that the Service Agreement become effective July 17, 2000.

Comment date: July 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Northeast Utilities Service Company

[Docket No. ER00–2889–000]

Take notice that on June 19, 2000, Northeast Utilities Service Company (NUSCO), tendered for filing, Service Agreement to provide Firm Point-To-Point Transmission Service to Morgan Stanley Capital Group Inc. under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to Morgan Stanley Capital Group Inc..

NUSCO requests that the Service Agreement become effective July 17, 2000.

Comment date: July 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Northeast Utilities Service Company

[Docket No. ER00–2890–000]

Take notice that on June 19, 2000, Northeast Utilities Service Company (NUSCO), tendered for filing, a notice that the Northeast Utilities System Companies Open Access Transmission Service Tariff No. 9 should be considered modified to adopt the revised North American Electric Reliability Council Transmission Loading Relief procedures approved in *North American Electric Reliability Council*, 91 FERC ¶ 61,122 (2000) .

Copies of this filing have been served upon all parties to this proceeding.

Comment date: July 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Public Service Corporation

[Docket No. ER00–2891–000]

Take notice that on June 19, 2000, Wisconsin Public Service Corporation (WPSC) tendered for filing an executed Service Agreement with MPEX, Inter-Utility Marketing providing for transmission service under FERC Electric Tariff, Volume No. 1.

WPSC requests that the agreement be made effective on June 6, 2000.

Comment date: July 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Public Service Corporation

[Docket No. ER00–2892–000]

Take notice that on June 19, 2000, Wisconsin Public Service Corporation (WPSC) tendered for filing an executed Service Agreement with MPEX, Inter-Utility Marketing providing for transmission service under FERC Electric Tariff, Volume No. 1.

WPSC requests that the agreement be made effective on June 6, 2000.

Comment date: July 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. United States Department of Energy and Bonneville Power Administration

[Docket No. NJ00–6–000]

Take notice that on June 16, 2000, the Bonneville Power Administration (Bonneville) filed a petition for Expedited Declaratory Order that Proposed Amended Open Access Transmission Tariff Maintains Reciprocity Finding and for Exemption in lieu of Filing Fee. The petition includes a modification to the Bonneville open access transmission tariff adopting the language of Section 17.7 of the Commission's pro forma tariff.

Comment date: July 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16539 Filed 6–29–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11690–001, Alaska]

Alaska Village Electric Cooperative, Inc.; Notice of Availability of Final Environmental Assessment

June 26, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for an original license for the Alaska Village Electric Cooperative, Inc.'s (AVEC) proposed Old Harbor Hydroelectric Project, and has prepared a Final Environmental Assessment (FEA). The project would be located near the city of Old Harbor, Alaska on Kodiak Island, predominantly on the Kodiak National Wildlife Refuge.

On January 19, 2000, the Commission staff issued a draft environmental assessment (DEA) for the project and requested that comments be filed with the Commission within 45 days. Comments on the DEA were filed by the National Marine Fisheries Service,

Alaska Department of Fish and Game and polarconsult alaska, inc and are addressed in the FEA.

The FEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the FEA are available for review in the Commission's Public Reference Room, Room 2A, at 888 First Street, N.E., Washington, D.C. 20426, and may also be viewed on the web at http:///www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–16570 Filed 6–29–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENT PROTECTION AGENCY

[ER–FRL–6608–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements

Filed June 19, 2000 Through June 23, 2000

Pursuant to 40 CFR 1506.9.

EIS No. 000201, Draft EIS, AFS, ID, Myrtle-Cascade Projected, Implementation of Resource Management Activities, Idaho Panhandle National Forests, Bonners Ferry Ranger District, Boundary County, ID, Due: August 14, 2000, Contact: Pat Behresn (208) 267–6743.

EIS Nl. 000202, Final EIS, COE, AZ, Tres Rios Feasibility Study Project, Ecosystem Restoration, Located at the Salt, Gila and Agua Fria Rivers, City of Phoenix, Maricopa County, AZ, Due: July 31, 2000, Contact: Alex Watt (213) 452–3860.

EIS No. 000203, Final EIS, IBR, NB, KS, Republican River Basin Long-Term Water Supply Contract Renewals for Five Irrigation Districts, Frenchman-Cambridge, Frenchman Valley and Bostwick Irrigation District in Nebraska and Bostwick No. 2 and Almena Irrigation Districts on Kansas, NB and KS, Due: July 31, 2000, Contact: Jill Manring (308) 389–4557.

EIS No. 000204, Final EIS, COE, TX, Programmatic EIS–Upper Trinity River Basin Feasibility Study, To Provide Flood Damage Reduction, Environmental Restoration, Water Quality Improvement and Recreational Enhancement, Trinity River, Dallas-Fort Worth Metroplex, Dallas, Denton and Tarrant Counties, TX, Due: July 31, 2000, Contact: Gene T. Rice (817) 978–2110.

EIS No. 000205, Final EIS, FHW, CA, CA–238 Construction, near Industrial Parkway to CA–238/I–580 Interchange, Funding, and 404 Permit, City of Hayward, Alameda County, CA, Due: July 31, 2000, Contact: robert F. Tally (916) 498–5020.

EIS No. 000206, Final Supplement, FHW, VA, DC, MD, Woodrow Wilson Bridge Improvements, Updated Information concerning the Changes and Discusses in differences between Alternative 4A of the September 1997 FEIS and Current Design Alternative 4A, I–95/I–495 (Captial Beltway), Telegraph Road to MD–210, Funding, COE Section 10 and 404 Permits and CGD Bridge Permit Issuance, City of, Due: July 31, 20009, Contact: Eugene Keller (202) 482–7251.

EIS No. 000207, Draft EIS, FHW, WA, Southeast Issaquah Bypass, Construction Connecting Issaquah-Hobart Road in the South with I–90 at the Sunset Interchange, Right-of-Way Permit, NPDES Permit and COE Section 404 Permit, King County, WA, Due: August 15, 2000, Contact: Don Petersen (360)(753–9413.

EIS No. 000208, Draft EIS, COE, WA, Programmatic EIS—Green/Duwamish River Basin Restoration Program, Capitol Improvement Type Program and Ecological Health, King County, WA, Due: August 14, 2000, Contact: Patrick Cagney (206) 764–6577.

EIS No. 000209, Draft EIS, COE, CA, Whitewater River Basin (Thousand Palms) Flood Control Project, Construction of Facilities to Provide Flood Protection, Coachella Valley, Riverside County, CA, Due: August 14, 2000, Contact: Hayley Lovan (213) 452–3863.

EIS No. 000210, Draft EIS, COE, CA Upper Newport Bay Restoration Project, To Develop a Long-Term Management Plan to Control Sediment Deposition, Orange County, CA, Due: August 14, 2000. Contact: Larry Smith (213) 452–3846.

EIS No. 000211, Revised Draft EIS, COE, AZ, Rio de Flag Flood Control Study, Improvement and Flood Protection, To Reduce Damages to Residential Commercial, Industrial and Historic Property, City of Flagstaff, Coconino County, AZ, Due: August 14, 2000, Contact: David Compas (213) 452–3850.

EIS No. 000212, Final EIS, FHW, NM, New Mexico Forest Highway 45 (Forest Road 537) known locally as the Sacramento River Road, Improvements from Sunspot to Timberon, Otero County, NW, Due: July 31, 2000, Contact: Robert Nestel (303) 716–2142.

EIS No. 000213, Draft EIS, IBR, AZ, Central Arizona Project (CAP), Allocation of Water Supply and Long-Term Contract Execution, Maricopa, Pinal and Pima Counties, AZ, Due: August 25, 2000, Contact: Sandra Eto (602) 216–3857.

EIS No. 000214, Draft EIS, UAF, WY, F.E. Warren Air Force Base Deactivation and Dismantlement of the Peacekeeper Missile System, To Comply with the Strategic Arms Reduction Treaty (START), Laramie, Platte and Goshen Counties, WY, Due: August 14, 2000, Contact: Lee Schoenecker (703) 604–0552.

EIS No. 000215, Final EIS, DOE, TN, Treating Transuranic (TRU)/Alpha Low-Level Waste at the Oak Ridge National Laboratory, Construct, Operate, and Decontaminate/Decommision of Waste Treatment Facility, Oak Ridge, TN Due: July 21, 2000, Contact: Clayton Gist (865) 241–3498.

EIS No. 000216, Draft EIS, AFS, ID, West Mountain North Project, Timber Harvest, Road Construction and Reconstruction), Boise National Forest, Cascade Ranger District, Valley County, ID, Due: August 14, 2000, Contact: David D. Rittenhouse (208) 373–4100.

EIS No. 000217, Draft EIS, FHW, NB, Antelope Valley Study, Implementation of Stormwater Management, Transportation Improvements and Community Revitalization, Major Investment Study, City of Lincoln, Lancaster County, NB, Due: August 15, 2000, Contact: Edward Kosola (402) 437–5973.

EIS No. 000218, Final EIS, DOE, FL, JEA Circulating Fluidized Bed (CFB) Combustor Project, 300 Megawatt-Electric, Coal and Petroleum Coke-Fired, CFB Combustor and Boiler to Repower an existing Steam Turbine at JEA's Northside Generating Station Construction and Operation, Funding, Jacksonville, Duval County, FL, Due: July 31, 2000, Contact Lisa K. Hollingworth (304) 285–4992.

Amended Notices

EIS No. 000111, Draft EIS, SFW, NV, Stillwater National Wildlife Refuge Complex Comprehensive Conservation Plan and Boundary Revision, Implementation, Churchill

and Washoe Counties, NV, Due: July 12, 2000, Contact: Don DeLong (916) 414–6500. Revision of FR notice published on 04/21/2000: CEQ Comment Date has been Extended from 06/12/2000 to 07/12/2000.

EIS No. 000184, Draft EIS, COE, MS, TN, MS, TN, Wolf River Ecosystem Restoration, Memphis, Tennessee Feasibility Study, Marshall, Benton and Tippah Counties, MS and Shelby, Fayette and Harderman, TN, Due: July 31, 2000, Contact: Richard Hite (901) 544–0706. Published FR–06–16–00—Correction to Title.

EIS No. 000187, Fianl Supplement, NOA, Atlantic Tunas, Swordfish and Sharks, Highly Migratory Species Fishery Management Plan, Due: July 17, 2000, Contact: Rebecca Lent (301) 713–2347. Published FR 06–16–00 Correction to Phone Number.

Dated: June 27, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–16656 Filed 6–29–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6608–7]

Environmental Impact Statement and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 12, 2000 Through June 16, 2000 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of FEDERAL ACTIVITIES AT (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–AFS–L65356–ID Rating NR, Box Canyon Timber Sale, Vegetative Management, Implementation, Palisades Ranger District, Caribou-Targhee National Forest, Bonneville County, ID.

SUMMARY: EPA Region 10 used a screening tool to conduct a limited review of this action. Based upon this screen, EPA does not foresee having any environmental objections to the proposed project.

ERP No. D–COE–C39014–NJ Rating EO2, Raritan Bay and Sandy Hook Bay, Hurricane and Storm Damage Reduction Project, Flood Control and Storm Damage Protection, Port Monmouth, Middletown Township, Monmouth County, NJ.

SUMMARY: EPA objected to the proposed mitigation plan, and recommended wetlands enhancement at a 3:1 ratio or creation of a Spartina dominated wetland at a 1:1 ratio. EPA requested more information on enhancement, monitoring, and borrow areas.

Final EISs

ERP No. F–SFW–L03009–AK Wolf Lake Area Natural Gas Pipeline Project, Construction, Approval Right-of-Way Grant and COE Section 404 Permit, Kenai National Wildlife Refuge, AK.

SUMMARY: No formal comment letter was sent to the preparing agency.

Dated: June 27, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–16657 Filed 6–29–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6727–6]

Notice of Public Comment and Public Workshops; Western Regional Air Partnership

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces public workshops and a request for public comment sponsored by the Western Regional Air Partnership (WRAP). The workshops and the request for comments concern four proposed options regarding regional emissions milestones for stationary sources of sulfur dioxide (SO_2), as well as proposed recommendations regarding a backstop emissions trading program. EPA is publishing this notice on behalf of the WRAP.

DATES: See Supplementary Information section of this notice.

ADDRESSES: See Supplementary Information section of this notice for the Workshop locations.

FOR FURTHER INFORMATION CONTACT: Al Zemsky, Senior External Advisor, Air Division, (AIR–1), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1262.

SUPPLEMENTARY INFORMATION: The WRAP, comprising governors from Western states, tribal leaders and federal agency representatives, is seeking public comment on four proposed options regarding regional emissions milestones for stationary sources of sulfur dioxide (SO_2), as well as proposed recommendations regarding a backstop emissions trading program. The comments are important for developing final recommendations for western air quality regulations to be submitted to the U.S. EPA.

The dates, times, and locations of the workshops and the availability of the documents to be reviewed for comment are described below.

Notice of Public Comment and Public Workshops

The Western Regional Air Partnership (WRAP), comprising governors from Western states, tribal leaders and federal agency representatives, is seeking public comment on four proposed options regarding regional emissions milestones for stationary sources of sulfur dioxide (SO2), as well as proposed recommendations regarding a backstop emissions trading program. Public comments on these options are to be considered by the WRAP in developing final recommendations for sulfur dioxide emission reduction milestones and related western air quality issues. Under section 309 of the regional haze program (see 64 FR 35713; July 1, 1999), these recommendations are to be submitted to the U.S. Environmental Protection Agency (EPA) in October 2000.

Availability of Proposed Options

Availability of Proposed Options Three documents are available for review on the WRAP Web site at *www.wrapair.org.* They are reports from the WRAP's Market Trading Forum, the Initiatives Oversight Committee, and a brief summary of the WRAP's proposal for comment. Copies may also be obtained by contacting: Patrick Cummins, Western Governors' Association; 600 17th Street, Suite 1705 S. Tower; Denver, Colorado 80202 (telephone: 303–623–9378; pcummins@westgov.org); or Bill Grantham, National Tribal Environmental Council; 2221 Rio Grande NW; Albuquerque, New Mexico 87104 (telephone: 505–242–2175; bgrantham@ntec.org).

Public Workshops Will Be Held on the Following Dates:

June 27: Santa Fe, New Mexico " 7 p.m. Runnels Building Auditorium; 1190 St. Francis Drive

June 27: Las Vegas, Nevada " 10 a.m.-5 p.m. " Workshop for Tribes

Holiday Inn, Emerald Springs; 325 E. Flamingo Road
June 27: Flagstaff, Arizona '' 4 p.m. Northern Arizona University, DuBois Center, 306 East Pine Knoll Drive.
June 28: Salt Lake City, Utah '' 7 p.m. Department of Environmental Quality, Room 101; 162 N. 1950 W.
June 29: Casper, Wyoming '' 7 p.m. Basco Building; 777 W. First Street
TBA: Colorado

Initial Public Comment Period

Initial public comment will be held from May 15 until July 7, 2000. Comments may be submitted in writing to Patrick Cummins, Western Governors' Association; 600 17th Street, Suite 1705 S. Tower; Denver, Colorado or Bill Grantham, National Tribal Environmental Council; 2221 Rio Grande NW; Albuquerque, New Mexico 87104. Comments may also be filed electronically on the WRAP Web site at *www.wrapair.org* or by submitting comments on floppy disk. In addition, comments may be presented at any one of the public workshops. Written comments should include a typewritten, or legible hand written summary of key issues no more than 250 words in length. The purpose of the initial public comment period is to provide input to the WRAP as it narrows its options and continues development of final recommendations regarding a regional backstop market trading program.

Final Public Comment Period and Public Meetings

Public comment on final recommendations will be sought August 14 to September 8, 2000. Regional public meetings will be held in communities throughout the West. Currently, meetings are being considered for Arizona, Colorado, Idaho, New Mexico, Oregon, Utah, Washington, and Wyoming. Others may be added. Details will be made available shortly on the WRAP Web site. Final recommendations will be submitted to EPA by October 2, 2000.

Background

The WRAP was created as the successor organization to the Grand Canyon Visibility Transport Commission (GCVTC), which made over 70 recommendations in June 1996 for improving visibility in 16 national parks and wilderness areas on the Colorado Plateau. The Partnership promotes, supports and monitors implementation of those recommendations throughout the West. Under EPA's Regional Haze Rule (64 FR 35713, July 1, 1999), nine of the Western states have the option to comply with the GCVTC's regional visibility protection program. The program requires the establishment of a regional emission milestone for 2018, in addition to interim milestones. The recommendations and options regarding the market trading program were developed over the last two years by WRAP committees comprising a diverse group of stakeholders including industry, environmental groups and academia.

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

Dated: June 14, 2000.

Laura Yoshii,

Acting Regional Administrator,, Region IX.

[FR Doc. 00–16630 Filed 6–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34215A; FRL–6595–6]

Organophosphate Pesticide; Availability of Revised Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the revised risk assessments and related documents for one organophosphate pesticide, mevinphos. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture (USDA) to increase transparency in the tolerance reassessment process for organophosphate pesticides.

DATES: Comments, identified by docket control number OPP– 34215A, must be received by EPA on or before August 29, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34215A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703-308-8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on mevinphos, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. *Electronically.* You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. *In person.* The Agency has established an official record for this action under docket control number OPP–34215A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis

Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34215A in the subject line on the first page of your response.

1. *By mail*. Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. Submit electronic comments by e-mail to: ''opp-docket@epa.gov,'' or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–34215A. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

IV. What Action is EPA Taking in this Notice?

EPA is making available for public viewing the revised risk assessments and related documents for one organophosphate pesticide, mevinphos. These documents have been developed as part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the mevinphos preliminary risk assessments, which was released to the public January 12, 2000 (65 FR 1869) (FRL–6486–9) through a notice in the **Federal Register**.

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk management for mevinphos. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the chemical specified in this notice. Such comments and proposals could address ideas about how to manage dietary, occupational, or ecological risks on specific mevinphos use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commenters may choose to discuss the feasibility of lower application rates, increasing the time interval between application and harvest (''pre-harvest intervals''), modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, commenters may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. For ecological risks, commentors may suggest ways to reduce environmental exposure, e.g., exposure to birds, fish, mammals, and other non-target organisms. EPA will provide other opportunities for public participation and comment on issues associated with the organophosphate tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before August 29, 2000 at the addresses given under the ''ADDRESSES'' section. Comments and proposals will become part of the Agency record for the organophosphates specified in this notice.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: June 21, 2000.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 00–16635 Filed 6–29–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–951; FRL–6592–6]

Notice of Filing Pesticide Petitions to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filings and amendments of pesticide petitions proposing the establishment/amendments of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–951, must be received on or before July 31, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–951 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Vera Soltero, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9359; and e-mail address: soltero.vera@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–951. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–951 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: ''*opp-docket@epa.gov* ,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–951. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under ''FOR FURTHER INFORMATION CONTACT.''

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 23, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Initial Filings

1. Aventis CropScience USA LP

PP 0E6162

EPA has received a pesticide petition 0E6162 from Aventis CropScience, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of ethyl 5,5-diphenyl-2-isoxazoline-3-carboxylate (CAS No. 163520–33–0) (herbicide safener isoxadifen-ethyl, Company Code AE F122006) in or on the raw agricultural commodities corn grain at 0.1 parts per million (ppm), corn forage at 0.3 ppm, and corn stover at 0.5 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of isoxadifen-ethyl (ethyl 5,5-diphenyl-2-isoxazoline-3-carboxylate) in corn and rice has been investigated and is understood. Total residue levels in corn commodities were very low. The initial metabolic transformation of isoxadifen-ethyl in plants is hydrolysis of the prominent ester function, yielding the carboxylic acid, AE F129431 (4,5-dihydro-5,5-diphenyl-3-isoxazolecarboxylic acid), the principal metabolite in forage, grain and stover. The pathway then proceeds via hydroxylation of the phenyl ring to AE F162241 (4,5-dihydro-5-(4-hydroxyphenyl)-5-phenyl-3-isoxazolecarboxylic acid) which was also significant in forage and stover. AE F129431 and AE F162241 were also identified in a rice metabolism and rat metabolism study.

2. *Analytical method.* Based on the results of the metabolism studies, the analytical targets selected were the parent compound, isoxadifen-ethyl, the major metabolite AE F129431 and the minor metabolite AE F162241. A practical method for the determination of these targets is available. Extractable residues of isoxadifen-ethyl and its two metabolites are extracted from crops with blending in a mixture of acidic aqueous acetonitrile. After washing with hexane and treatment with saturated brine, the analytes of interest are partitioned into dichoromethane. Isoxadifen-ethyl is separated from the two acidic metabolites by selective solid phase extraction, concentrated and quantified by capillary gas chromatography with ion-trap mass spectrometric detection. The extract containing the metabolites is divided in two portions. One portion is treated with trimethylsilyl-diazomethane to convert AE F129431 to its methylated derivative then quantified by capillary gas chromatography with ion-trap mass spectrometric detection. AE F162241 is quantified in the second portion by high performance liquid chromatography with ion-trap mass spectrometric detection. The limits of quantification (LOQ) are 0.02 ppm in corn grain and 0.05 ppm in corn forage and stover.

3. *Magnitude of residues.* Residue trials were carried out in a total of 29 field residue trials, in the U.S. and Canada using a water dispersible granule (WG) formulation containing 50% weight/weight (w/w) isoxadifen-ethyl. The preparation was predominantly applied in a split application of 30 grams/hectares (g/ha) followed by 60 g/ha. In a limited number of Canadian trials the treatments were split as two sequential applications of 45 grams active ingredient/hectare (g ai/ha) each. In the U.S. trials a single application of 160 g ai/ha was also investigated. Pre-harvest intervals were between 37 to 67, 60 to 121 and 79 to 151 days for forage, grain and stover, respectively. No residues of the parent compound were detected in any corn grain stover or forage. Isoxadifen-ethyl derived residues in corn grain were limited to isolated observations of the metabolite AE F129431, to a maximum of 0.06 ppm. Residues in corn stover and forage were only observed in the form of AE F129431 and AE F162241. Following treatment of the corn with two applications totaling 90 g ai/ha, residues of AE F129431 and AE F162241 reached respective maxima of 0.13 ppm and 0.08 ppm in stover but were not detected in forage. Following treatment of the corn with a single application of 160 g ai/ha, residues of AE F129431 reached respective maxima of 0.35 ppm and 0.15 ppm in stover and forage. Following the higher application rate, residues of AE F162241 reached respective maxima of 0.1 ppm and 0.05 ppm in stover and forage. Tolerances are being proposed for the parent compound and AE F129431. Tolerances for the combined residues of isoxadifen-ethyl and AE F129431 are proposed at 0. 1 ppm, 0.3 ppm and 0.5 ppm respectively, for grain, forage and stover. Tolerances are not proposed for the more polar metabolite, AE F162241 as it is not found in corn grain. In animal feed items levels are considerably lower than AE F129431 and it does not accumulate in animal tissues.

In a corn processing study, no residues above 0.02 milligrams/kilograms (mg/kg) were observed in corn grain following treatment of the crop at the nominal rate of 150 followed by 300 g ai/ha. This exaggerated rate is approximately five times the maximum proposed label rate. Since no residues were observed in the raw agricultural commodity, neither analysis of the processed commodities nor tolerances are required. Although corn grain is fed to cattle and poultry and cattle may be grazed on forage or fed stover, tolerances in meat, milk or eggs are not necessary for a safener because metabolism studies in cattle and poultry indicated very low residue levels at

dosing rates considerably higher than anticipated from field ingestion.

B. Toxicological Profile

1. *Acute toxicity*. Isoxadifen-ethyl is slightly toxic following acute oral exposure, no more than slightly toxic following acute dermal exposure and practically non-toxic following acute inhalation exposure. The acute rat oral LD_{50} of isoxadifen-ethyl was 1,740 mg/kg. The acute rat dermal LD_{50} was greater than 2,000 mg/kg and the 4-hour rat inhalation LC_{50} was > 5 milligrams/liter (mg/L). Isoxadifen-ethyl was slightly irritating to rabbit eyes and non-irritating to rabbit skin. Based on these results, isoxadifen-ethyl would be classified as EPA Category III for oral and dermal toxicity and eye irritation, and EPA Category IV for inhalation toxicity and dermal irritation. Technical isoxadifen-ethyl was shown to be a dermal sensitizer in a guinea pig maximization assay, but no evidence of sensitization has been observed in a Buehler assay when formulated into a commercial product.

2. *Genotoxicity*. No evidence of genotoxicity was noted in *Salmonella* and *E. coli* reverse bacterial mutation assays, an *in vitro* mammalian gene mutation assay in Chinese hamster lung (V79) cells, an *in vivo* unscheduled DNA synthesis assay in rat hepatocytes, or a mouse micronucleus assay. An increase in chromosomal aberrations was observed in an *in vitro* assay in Chinese hamster lung (V79) cells, but only at toxic concentrations. Thus, the overall weight of evidence indicates that isoxadifen-ethyl does not possess significant genotoxic activity.

3. *Reproductive and developmental toxicity*. A rat developmental toxicity study was conducted at dose levels of 0, 15, 120, and 1,000 mg/kg/day. Maternal toxicity (including one death) was noted at 1,000 mg/kg/day. Slight developmental toxicity (an increase in resorptions) but no evidence of teratogenicity was also noted at this level. No effects were noted at 120 mg/kg/day, which was considered to be the no observed adverse effect level (NOAEL) for both maternal and developmental toxicity.

A rabbit developmental toxicity study was conducted at dose levels of 0, 5, 50, and 500 mg/kg/day. Maternal effects at 500 mg/kg/day consisted of decreased food consumption, slight weight loss during gestation days 6-8, and one death. In addition, one animal at 500 mg/kg/day had only two empty implantation sites. No evidence of teratogenicity or developmental toxicity was noted. Thus, 50 mg/kg/day was considered to be the NOAEL for maternal toxicity while 500 mg/kg/day was the NOAEL for developmental effects.

In the 2-generation reproduction study in the rat, administration of isoxadifen-ethyl at 4,000 ppm, resulted in parental toxicity in both sexes from the F_0 and F_1 generation consisting of reduction in body weight gain food intake and an increase in microscopic kidney lesions. The only effect seen in the offspring was lower pup weights of the F_1 generation together with a delay in achievement of vaginal patency and balanopreputial separation (due to the reduced body weight), at 4,000 ppm. The weights of F_0 males were significantly reduced throughout the pre-mating treatment period; those of F_2 females were reduced only during the first week after weaning. The NOAEL for both parental and neonatal toxicity was 200 ppm, equivalent to an overall mean achieved intake of about 16.4 mg/kg body weight/day.

4. *Subchronic toxicity*. In a 90-day rat feeding study, isoxadifen-ethyl was administered at dietary concentrations of 0, 20, 200, 2,000, and 4,000 ppm. The NOAEL for this study was considered to be 200 ppm (approximately 15.3 mg/kg/day) based on decreased weight gain at 2,000 ppm, and decreased weight gain, increased liver weights, and centrilobular hepatocyte enlargement at 4,000 ppm.

In a 90-day feeding study in mice, isoxadifen-ethyl was administered at dietary concentrations of 13, 125, 1,250, and 2,500 ppm. Decreased kidney weights, increased liver weights, and histopathological changes in the liver (centrilobular hepatocyte enlargement and vacuolation) were noted at 1,250 and 2,500 ppm. The NOAEL for this study was 125 ppm (approximately 23 mg/kg/day).

In a 90-day dog feeding study, isoxadifen-ethyl was administered to beagle dogs at dietary concentrations of 0, 25, 125, and 1,000 ppm. Dietary administration of 1,000 ppm isoxadifen-ethyl exceeded the maximum tolerated dose (MTD), and it was concluded that 700 ppm would be a suitable high dose level for a chronic dog study. The NOAEL for this 90-day study was considered to be 25 ppm (approximately 1.3 mg/kg/day) based on slight histopathological effects in the kidneys at 125 ppm, and effects on the kidneys, spleen, liver, heart, and intestines at 1,000 ppm.

5. *Chronic toxicity*. Chronic toxicity has been assessed in both the rat and the dog. In the rat combined chronic toxicity and oncogenicity study, the liver was the target organ as evidenced by increases in liver weight and centrilobular hepatocyte hypertrophy. The no-effect level was 200 ppm (10 mg/kg/day). Whilst in the dog the kidney was the target organ with vacuolation of the straight tubular cytoplasm occurring at the high dose level. The no-effect level was 3.5 mg/kg/day indicating, as in the subchronic studies, that the dog is the most sensitive species. Based on the dog, Aventis CropScience believes the Reference Dose (RfD) for isoxadifen-ethyl is 0.035 mg/kg/day. No carcinogenic activity was detected in dogs, mice, and rats at the Maximum Tolerated Dose (MTD). Isoxadifen-ethyl is not oncogenic in dogs, rats, or mice and is not likely to be carcinogenic in humans. Aventis CropScience believes isoxadifen-ethyl should be classified as a ''Not Likely'' carcinogen based on the lack of carcinogenicity in rats and mice.

6. *Animal metabolism*. The metabolism of isoxadifen-ethyl has been determined in the rat and dog. In both species the main metabolic route was hydrolysis of the ester to yield the free acid AE F129431 (5,5-diphenyl-2-isoxazoline-3-carboxylic acid), which is the same as observed in plants. This was the only significant metabolic route in the dog following either gavage or dietary dosing. In the rat there was an additional metabolic route which led to the formation of a hydroxylated free acid, AE F162241 (4,5-dihydro-5-(4-hydroxyphenyl)-5-phenyl-3-isoxazolecarboxylic acid), also a plant metabolite. This was a major metabolic route in male rats, particular at the low-dose, but was only a minor metabolic route in female rats. Unchanged isoxadifen-ethyl was only excreted in trace amounts in the feces. There were a number of minor (< 3%) polar metabolites also excreted, which were not identified. A further plant metabolite AE C637375 (b-hydroxy-b-benzenepropanenitrile) was also shown to be a trace metabolite in the rat.

The metabolism of isoxadifen-ethyl in ruminants is adequately understood. A dairy cow was dosed with the compound at a level equivalent to 11.52 ppm in the diet for 7 days. Total residue levels were very low. Parent compound was seen in fats and milk only. The carboxylic acid, AE F129431, was the major metabolite identified in all of the tissues, with traces also being found in the milk.

The metabolism of isoxadifen-ethyl in poultry is also adequately understood. Laying hens were fed the compound at a level equivalent to 11 ppm in the diet for 14 days. Residue levels were low in all commodities. The vast majority of the dose was excreted as AE F129431, with smaller amounts of AE F162241

and isoxadifen-ethyl. AE F129431 was the major metabolite identified in all of the tissues and yolks. Trace amounts of isoxadifen-ethyl and AE F162241 were detected in liver and eggs with isoxadifen-ethyl also being detected in the muscle. The metabolic profile of isoxadifen-ethyl in the hen was similar to that seen in the cow and rat.

7. *Endocrine disruption*. No special studies have been conducted to investigate the potential of isoxadifen-ethyl to induce estrogenic or other endocrine effects. However, no evidence of estrogenic or other endocrine effects have been noted in any of the standard toxicology studies that have been conducted with this product and there is no reason to suspect that any such effects would be likely.

C. Aggregate Exposure

1. *Dietary exposure*. Isoxadifen-ethyl will be used only as a herbicide safener for use on rice and corn. No non-agricultural uses are anticipated. Thus, the only potential sources of non-occupational exposure to isoxadifen-ethyl would consist of any potential residues in food and drinking water. As previously indicated, in the absence of any acute toxicity concerns, only chronic exposures have been evaluated.

i. *Food*. Chronic dietary analysis was conducted to estimate exposure to potential isoxadifen-ethyl derived residues in/on corn. A Tier One analysis was conducted using the Dietary Expected Evaluation Model (DEEM) software and the 1994-1996 CSFII food consumption data. It was assumed that residues were at proposed tolerance levels in rice (0.05 ppm) and corn grain (0.1 ppm) and that 100% of crop was treated. Additionally, based on the results from appropriate studies, it was assumed that there was no concentration into processed commodities and that contributions from residues in meat, milk or eggs are not required. A chronic RfD of 0.035 mg/kg/day is derived from the NOAEL of 3.5 mg/kg/day in the most sensitive species, dog. Using these inputs the chronic dietary exposure estimate from residues of isoxadifen-ethyl for the U.S. population was 0.000173 mg/kg /day or 0.5% of its RfD. For the sub-population with the highest exposure, non-nursing infants, the chronic dietary exposure estimate from residues of isoxadifen-ethyl was 0.000448 mg/kg/day, or 1.3% of its RfD. These values are highly conservative, having been based on worst case assumptions of tolerance level residues and 100% of the crop treated.

ii. *Drinking water*. EPA's Standard Operating Procedure (SOP) for Drinking Water Exposure and Risk Assessments was used to perform the drinking water assessment. This SOP uses a variety of tools to conduct drinking water assessment. These tools include water models such as Screening Concentration in Ground Water (SCI-GROW), Generic Expected Environmental Concentration (GENEEC), Pesticide Root Zone Model (PRZMS)/EXAMS, and monitoring data. If monitoring data are not available then the models are used to predict potential residues in surface and ground water and the highest is assumed to be the drinking water residue. In the case of isoxadifen-ethyl monitoring data do not exist; therefore, model calculations were used to estimate a water residue. The calculated drinking water levels of comparison (DWLOC) for chronic exposures for all adults and children greatly exceed the drinking water estimated concentrations (DWEC) from the models. The chronic DWLOC for adults is 1,218 parts per billion (ppb). The chronic DWLOC for children/toddlers is 346 ppb. The worst case chronic DWEC is 0.165 ppb based on a PRZM/EXAMS simulation of runoff into surface water in a standard EPA exposure assessment scenario for corn (MLRA 111, Ohio). The DWEC represents combined residues of isoxadifen-ethyl and AE F129431, expressed as isoxadifen-ethyl equivalents.

2. *Non-dietary exposure*. Exposure to isoxadifen-ethyl for the mixer/loader/ground boom/aerial applicator was calculated using the Pesticide Handlers Exposure Database (PHED). It was assumed that the product would be applied to a maximum of 50 ha per day (125 acres/day) by ground boom applicator and 140 ha per day (350 acres/day) by aerial applicator at a maximum use rate of 45 g a.i./ha. Normal work attire consisting of long-sleeved shirt, long pants, and protective gloves was assumed in the PHED assessment. Margins of exposure (MOEs) for a 70 kg operator were calculated utilizing a dermal NOAEL of 1,000 mg/kg body weight/day from the rat dermal toxicity study and an inhalation NOAEL of 3.5 mg/kg body weight/day based on the dog chronic toxicity study. The combined MOE (inhalation plus dermal) for isoxadifen-ethyl was 28,000 for a ground operator undertaking mixing, loading and spraying. For aerial application where the mixer/loader was assumed to be a different operator from the pilot combined MOEs were 17,000 for the mixer/loader and 233,000 for the pilot. The results indicate that large margins of safety exist for the proposed use of isoxadifen-ethyl.

D. Cumulative Effects

There is no information to indicate that isoxadifen-ethyl may share a common mechanism of toxicity with any other chemical. Thus, this assessment was not needed.

E. Safety Determination

1. *U.S. population*. Using the conservative assumptions described above, based on the completeness and reliability of the toxicity data, it is concluded that aggregate exposure, in this case food only, to the proposed uses of AE F 122006 will utilize at most 0.5% of the reference dose for the U.S. population. The actual exposure is likely to be much less as more realistic data and models are developed. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risk to human health. Drinking water levels of comparison based on the dietary exposure are much greater than highly conservative estimated levels, and would be expected to be well below the 100% level of the RfD, if they occur at all. Therefore, there is a reasonable certainty that no harm will occur to the U.S. population from aggregate exposure (food and drinking water) to isoxadifen-ethyl.

2. *Infants and children*. No evidence of increased sensitivity to fetuses was noted in There has been no indication of reproductive effects or indication of increased sensitivity to the offspring in the 2-generation rat reproduction study. No additional safety factor to protect infants and children is necessary as there is no evidence of increased sensitivity in infants and children.

Using the conservative assumptions described in the exposure section above, the percent of the RfD that will be used for exposure to residues of isoxadifen-ethyl in food for non-nursing infants (the most highly exposed subgroup) is 1.3%. The children (1-6) exposure is 1.1% of the RfD. As in the adult situation, DWLOCs are much higher than the worst case DWECs and are expected to use well below 100% of the RfD, if they occur at all. Therefore, there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to residues of AE F122006.

F. International Tolerances

There are no Codex Alimentarius Commission maximum residue levels

established for residues of isoxadifen-ethyl.

2. Cabot Corporation

PP 0E6109

EPA has received a pesticide petition (0E6109) from Cabot Corporation, 75 State St., Boston, MA, 02109 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for silicon dioxide, fumed, amorphous when used in accordance with good agricultural practices as an inert ingredient in pesticide formulations applied to animals. Silicon dioxide, fumed, amorphous is already exempted from the requirements of a tolerance when used as an inert ingredient in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

No residue chemistry data are presented in the petition as the Agency does not generally require these data to rule on the exemption from the requirement of a tolerance for an inert ingredient.

B. Toxicological Profile

The Agency has established a set of criteria which identifies categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compounds compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit polymer's ability to cause adverse effects. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Cabot Corporation believes that silicon dioxide, fumed, amorphous conforms to the definition of a polymer given in 40 CFR 723.250(b) and meet the following criteria used to identify a low risk polymer.

1. Silicon dioxide, fumed, amorphous is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. Silicon dioxide, fumed, amorphous contains as an integral part of its composition the atomic elements silicon and oxygen.

3. Silicon dioxide, fumed, amorphous does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(iii).

4. Silicon dioxide, fumed, amorphous is not designed, nor is it reasonably anticipated to substantially degrade, decompose or depolymerize prior to, during, or after use.

5. Silicon dioxide, fumed, amorphous is not manufactured or imported from monomers and/or reactants that are not included on the Toxic Substances and Control Act (TSCA) substance inventory or manufactured under an applicable TSCA section 5 exemption.

6. Silicon dioxide, fumed, amorphous is not a water absorbing polymer with a number average molecular weight greater than or equal to 10,000.

7. Silicon dioxide, fumed, amorphous has a minimum-average molecular weight of 645,000 daltons. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the gastrointestinal (GI) tract. Chemicals not absorbed though the skin or GI tract generally are incapable of eliciting a toxic response.

8. Silicon dioxide, fumed, amorphous has a minimum average molecular weight of 645,000 daltons. Silicon dioxide meets the requirements for molecular weight distribution of oligomer contents of less than 5% with molecular weights less than 1,000 and less than 2% with molecular weights less than 500.

Cabot Corporation believes that sufficient information has been submitted to assess the hazards of silicon dioxide, fumed, amorphous. No toxicology data are being submitted as the Agency does not generally require these data to rule on the exemption from the requirement of a tolerance for an inert ingredient. Because silicon dioxide conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with toxicity.

C. Aggregate Exposure

1. *Dietary exposure*. Silicon dioxide, fumed, amorphous is not absorbed through the intact gastrointestinal tract and is incapable of eliciting a toxic response.

2. *Drinking water*. Silicon dioxide, fumed, amorphous is not soluble in water and therefore there is no reason to expect human exposure to residues in water.

3. *Non-dietary exposure*. For most uses of silicon dioxide, fumed, amorphous the primary route of exposure is dermal. Silicon dioxide, fumed, amorphous with a molecular weight significantly greater than 400 is not absorbed through the intact skin.

D. Cumulative Effects

Cabot Corporation believes that sufficient information has been submitted to assess the hazards of silicon dioxide, fumed, amorphous. Because silicon dioxide, fumed, amorphous conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with cumulative effects.

E. Safety Determination

1. *U.S. population*. Cabot Corporation believes that sufficient information has been submitted to assess the hazards of silicon dioxide, fumed, amorphous. Because silicon dioxide, fumed, amorphous conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with any potential exposure to adults.

2. *Infants and children*. Cabot Corporation believes that sufficient information has been submitted to assess the hazards of silicon dioxide, fumed, amorphous. Because silicon dioxide, fumed, amorphous conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with exposure to infants and children.

Amended Petitions

1. Cabot Corporation

9E6017

EPA has received an amendment to a pesticide petition (9E6017) from Cabot Corporation, 75 State St., Boston, MA, 02109 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to amend an exemption from the requirement of a tolerance for dimethyl silicone polymer with silica (TS-720) when used in accordance with good agricultural practices as an inert ingredient in pesticide formulations applied to growing crops in or on the raw agricultural commodity after harvest or to animals. The initial notice of filing was published in the **Federal Register** of August 25, 1999 (64 FR 46378) (FRL–

6096–1). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

An exemption from the requirement of a tolerance under 40 CFR 180.1001(c) and (e) was established for dimethyl silicone polymer with silica in the **Federal Register** on March 1, 2000 (65 FR 10946) (FRL–6490–9), with the following uses: ''moisture barrier, anti-caking agent, anti-settling agent.'' This amendment to the petition requests that the use ''thickening agent'' be added so that the uses for dimethyl silicone polymer with silica under 40 CFR 180.1001(c) and (e) will read as follows: ''moisture barrier, anti-caking agent, anti-settling agent, thickening agent.''

A. Residue Chemistry

No residue chemistry data are presented in the petition as the Agency does not generally require these data to rule on the exemption from the requirement of a tolerance for an inert ingredient.

B. Toxicological Profile

As discussed in the March 1, 2000 **Federal Register**, dimethyl silicone polymer with silica meets all the criteria for a low risk polymer, as specified in 40 CFR 723.250.

C. Aggregate Exposure

1. *Dietary exposure*. Dimethyl silicone polymer with silica is not absorbed through the intact gastrointestinal tract and is incapable of eliciting a toxic response.

2. *Drinking water*. Dimethyl silicone polymer with silica is not soluble in water and therefore there is no reason to expect human exposure to residues in water.

3. *Non-dietary exposure*. For most uses of dimethyl silicone polymer with silica, the primary route of exposure is dermal. Dimethyl silicone polymer with silica with a molecular weight significantly greater than 400 is not absorbed through the intact skin.

D. Cumulative Effects

Cabot Corporation believes that sufficient information has been submitted to assess the hazards of dimethyl silicone polymer with silica. Because dimethyl silicone polymer with silica conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with cumulative effects.

E. Safety Determination

1. *U.S. population*. Cabot Corporation believes that sufficient information has been submitted to assess the hazards of TS-720. Because TS-720 conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with any potential exposure to adults.

2. *Infants and children*. Cabot Corporation believes that sufficient information has been submitted to assess the hazards of dimethyl silicone polymer with silica. Because dimethyl silicone polymer with silica conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with exposure to infants and children.

2. Cabot Corporation

9E6018

EPA has received an amendment to a pesticide petition (9E6018) from Cabot Corporation, proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to amend an exemption from the requirement of a tolerance for silane, dichloromethyl-, reaction product with silica (TS-610) when used in accordance with good agricultural practices as an inert ingredient in pesticide formulations applied to growing crops in or on the raw agricultural commodity after harvest or to animals. The initial notice of filing was published in the **Federal Register** of August 25, 1999 (64 FR 46378) (FRL–6096–1). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

An exemption from the requirement of a tolerance under 40 CFR 180.1001(c) and (e) was established for silane, dichloromethyl-, reaction product with silica in the **Federal Register** of March 1, 2000 (65 FR 10946) (FRL–6490–9), with the following uses: ''moisture barrier, anti-caking agent, anti-settling agent, anti-thickening agent.'' This petition amendment requests that ''anti-thickening'' be revised by deleting ''anti,'' so that the uses for silane, dichloromethyl-, reaction product with silica under 40 CFR 180.1001(c) and (e) will read as follows: ''moisture barrier, anti-caking agent, anti-settling agent, thickening agent.''

A. Residue Chemistry

No residue chemistry data are presented in the petition as the Agency does not generally require these data to rule on the exemption from the requirement of a tolerance for an inert ingredient.

B. Toxicological Profile

As discussed in the March 1, 2000 **Federal Register**, silane, dichloromethyl-, reaction product with silica meets all the criteria for a low risk polymer, as specified in 40 CFR 723.250.

C. Aggregate Exposure

1. *Dietary exposure*. Silane, dichloromethyl-, reaction product with silica is not absorbed through the intact gastrointestinal tract and is incapable of eliciting a toxic response.

2. *Drinking water*. Silane, dichloromethyl-, reaction product with silica is not soluble in water and therefore there is no reason to expect human exposure to residues in water.

3. *Non-dietary exposure*. For most uses of silane, dichloromethyl-, reaction product with silica the primary route of exposure is dermal. Silane, dichloromethyl-, reaction product with silica, with a molecular weight significantly greater than 400, is not absorbed through the intact skin.

D. Cumulative Effects

Cabot Corporation believes that sufficient information has been submitted to assess the hazards of silane, dichloromethyl-, reaction product with silica. Because silane, dichloromethyl-, reaction product with silica conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with cumulative effects.

E. Safety Determination

1. *U.S. population*. Cabot Corporation believes that sufficient information has been submitted to assess the hazards of silane, dichloromethyl-, reaction product with silica. Because silane, dichloromethyl-, reaction product with silica conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with any potential exposure to adults.

2. *Infants and children*. Cabot Corporation believes that sufficient information has been submitted to assess the hazards of TS-610. Because silane, dichloromethyl-, reaction product with silica conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with exposure to infants and children.

3. Cabot Corporation

9E6019

EPA has received an amendment to a pesticide petition (9E6019) from Cabot Corporation proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to amend an exemption from the requirement of a tolerance for hexamethyldisilizane, reaction product with silica (TS-530) when used in accordance with good agricultural practices as an inert ingredient in pesticide formulations applied to growing crops in or on the raw agricultural commodity after harvest or to animals. The initial notice of filing was published in the **Federal Register** of August 25, 1999 (64 FR 46378) (FRL–6096–1). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

An exemption from the requirement of a tolerance under 40 CFR 180.1001(c) and (e) was established for hexamethyldisilizane, reaction product with silica in the **Federal Register** of March 1, 2000 (65 FR 10946) (FRL–6490–9), with the following uses: ''moisture barrier, anti-caking agent, anti-settling agent.'' This petition amendment requests that the use ''thickening agent'' be added so that the uses for TS-530 under 40 CFR 180.1001(c) and (e) will read as follows: ''moisture barrier, anti-caking agent, anti-settling agent, thickening agent.''

A. Residue Chemistry

No residue chemistry data are presented in the petition as the Agency does not generally require these data to rule on the exemption from the requirement of a tolerance for an inert ingredient.

B. Toxicological Profile

As discussed in the March 1, 2000 **Federal Register**, hexamethyldisilizane, reaction product with silica meets all the criteria for a low risk polymer, as specified in 40 CFR 723.250.

C. Aggregate Exposure

1. *Dietary exposure*. Hexamethyldisilizane, reaction product with silica is not absorbed through the intact gastrointestinal tract and is incapable of eliciting a toxic response.

2. *Drinking water*. Hexamethyldisilizane, reaction product with silica is not soluble in water and therefore there is no reason to expect human exposure to residues in water.

3. *Non-dietary exposure*. For most uses of hexamethyldisilizane, reaction product with silica the primary route of exposure is dermal. Hexamethyldisilizane, reaction product with silica with a molecular weight significantly greater than 400 is not absorbed through the intact skin.

D. Cumulative Effects

Cabot Corporation believes that sufficient information has been submitted to assess the hazards of hexamethyldisilizane, reaction product with silica. Because hexamethyldisilizane, reaction product with silica conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with cumulative effects.

E. Safety Determination

1. *U.S. population*. Cabot Corporation believes that sufficient information has been submitted to assess the hazards of hexamethyldisilizane, reaction product with silica. Because hexamethyldisilizane, reaction product with silica conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with any potential exposure to adults.

2. *Infants and children*. Cabot Corporation believes that sufficient information has been submitted to assess the hazards of hexamethyldisilizane, reaction product with silica. Because hexamethyldisilizane, reaction product with silica conforms with the definition of a polymer and meets the criteria of a polymer under 40 CFR 723.250, Cabot Corporation believes there are no concerns for risks associated with exposure to infants and children.

[FR Doc. 00–16633 Filed 6–29–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–6727–4]

Draft EPA Guidance for Community Involvement in Supplemental Environmental Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Office of Enforcement and Compliance Assurance (EPA) is noticing a draft document, ''Guidance for Community Involvement in Supplemental Environmental Projects,'' for comment. This document is intended to provide guidance to EPA personnel on how to achieve the community involvement objectives of the 1998 Supplemental Environmental Projects Policy (SEP Policy). EPA is soliciting public comments on this guidance to assist it in addressing issues such as identifying communities affected by enforcement actions, facilitating the outreach process, encouraging realistic community expectations, and using liaisons to facilitate communication.

DATES: Comments are due on or before August 29, 2000.

ADDRESSES: Mail written comments to the Enforcement and Compliance Docket and Information Center (2201A), Docket Number EC–G–2000–055, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. (Comments may be submitted on disk in WordPerfect 8.0 or earlier versions.) Written comments may be delivered in person to: Enforcement and Compliance Docket and Information Center, U.S. Environmental Protection Agency, Room 4033, Ariel Rios Bldg., 1200 Pennsylvania Avenue, NW., Washington, DC. Submit comments electronically to docket.oeca@epa.gov. Electronic comments may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Melissa Raack, 202–564–7039, Office of Regulatory Enforcement, Mail Code 2248–A, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, e-mail: raack.melissa@epa.gov.

SUPPLEMENTARY INFORMATION: In its Supplemental Environmental Projects Policy of May 1, 1998, EPA affirmed its commitment to involve communities in the consideration of SEPs in appropriate enforcement cases. Although there is no formula for effective community

involvement, this guidance is intended to identify issues and suggest resources that may be utilized to achieve such involvement. Community involvement is an important goal that should be considered along with other enforcement goals, such as quick response to environmental threats, timely resolution of enforcement actions, and using limited resources effectively to achieve the maximum benefit for human health and the environment. Building trust between EPA and communities is the foundation of effective community involvement. EPA is soliciting comments on how this document can provide the best guidance to its personnel to ensure that trust is established and maintained in the SEP consideration process.

Sylvia K. Lowrance,

Acting Assistant Administrator, Office of Enforcement and Compliance Assurance.

Introduction

In its Supplemental Environmental Projects Policy (SEP Policy) of May 1, 1998, EPA affirmed its commitment to involve communities in the consideration of SEPs in appropriate enforcement cases.[1] Seeking community involvement can have a number of advantages. It can result in SEPs that meet a need of the community in which the violation of an environmental law occurred. It can also promote environmental justice, enhance community awareness of EPA's enforcement activities, and improve relations between the community and the violating facility.

This document provides guidance to EPA on achieving the community involvement objectives of the SEP Policy. It is premised on EPA's belief that effective SEPs respond to the environmental needs of the affected community. While direct community involvement may not be possible or appropriate in all cases involving SEPs, in many cases community involvement can be a valuable part of SEP consideration without adversely affecting the enforcement action.

Although there is no formula for effective community involvement, this guidance identifies issues and suggests resources that may be utilized to achieve such involvement. The guidance suggests when it may be appropriate to include the community in SEP consideration. It also provides direction for identifying communities potentially affected by the violations, facilitating the process, encouraging realistic community expectations, and using liaisons to facilitate communication.

This guidance recognizes that not every settlement can include a SEP proposed or favored by community members. SEPs are projects undertaken voluntarily by defendants, and not all defendants are interested in performing SEPs. Defendants may not be willing to solicit input from the community, or may not be receptive to community input. Further, final approval of all SEPs rests with EPA,[2] which must review project proposals to ensure consistency with the SEP Policy. Not all proposed projects will meet the criteria of the SEP Policy. Also, if different community groups support different SEP projects, some part of the community is likely to be disappointed no matter what the outcome of the SEP consideration process might be.

Nevertheless, community involvement is an important goal that should be considered along with other enforcement goals, such as quick response to environmental threats, timely resolution of enforcement actions, and using limited resources effectively to achieve the maximum benefit for human health and the environment. This guidance encourages Regions to think creatively about how to engage communities, even though direct community participation will not be possible in every case that includes a SEP. For example, Regions can consider setting up a SEP Bank to solicit community project ideas outside of the context of a particular enforcement action so that community project ideas are available to draw from in appropriate cases. Also, settlements can be structured to provide for community input on implementation of the SEP, even if participation in SEP consideration itself is not feasible.

Building trust between EPA and communities is the foundation of effective community involvement in the SEP consideration process. Even where community outreach does not result in a community-supported or proposed SEP being included in a settlement, effective community outreach can help increase the community's confidence in the process and may encourage the community to work with EPA in the future.

I. Reasons To Include Communities in the Consideration of SEPs

Including communities in the consideration of SEPs may benefit the defendant,[3] the community, the environment, and EPA. First, because SEPs help to protect the environment and public health, and can redress environmental harm, involving communities in SEP consideration enables EPA and the defendant to focus on the particular environmental priorities and concerns of a community, which is especially important if several different SEPs are being considered. The community can also be a valuable source of SEP ideas, including ideas that result in creative or innovative SEPs that might not otherwise have been considered.

Second, active community involvement can strengthen trust and cooperation between EPA and a community, and help EPA respond to communities' environmental protection priorities. Even when a SEP cannot fully respond to local priorities, community involvement may provide ideas for projects for future environmental protection efforts outside the context of the enforcement action (See discussion of SEP Banks).

Third, pursuant to the SEP Policy, a defendant's active participation and inclusion of public input into a SEP is one of the factors EPA uses to determine the penalty mitigation for a SEP. (SEP Policy, p. 16). Defendants may also benefit from community involvement because it can result in better relationships with the community.

Finally, the public has the opportunity to comment on the terms of proposed judicial and some administrative Consent Decrees, and early community involvement may avoid adverse comments on the terms of a settlement or a SEP during the public comment period. Community involvement also helps the public understand the process of judicial or administrative enforcement actions.

[1] The SEP Policy allows EPA to consider a defendant or respondent's willingness to perform an environmentally beneficial project when setting an appropriate penalty to settle an enforcement action. The purpose of a SEP is to secure significant environmental or public health protection improvements beyond those achieved by bringing the defendant into compliance. The SEP must be a new project, where EPA has the opportunity to shape the scope of the project before it is implemented, and the defendant must not be otherwise legally required to do the work. Community participation in SEP consideration is one of the factors considered in valuing a SEP. This summary of the SEP Policy should not be considered a full summary of the SEP requirements and persons interested in such requirements should consult EPA's Final SEP Policy at 63 FR 24796 (May 5, 1998).

[2] Throughout this guidance, the term ''EPA,'' when used in the context of a judicial enforcement action, also includes the Department of Justice.

[3] ''Defendant,'' when used herein, includes defendants in civil judicial actions and respondents in EPA administrative actions.

II. Determining When Community Involvement Is Appropriate

A. Community Participation In SEP Consideration In Individual Cases

Given the wide range of violations and communities, there is no formula to determine when community involvement in the consideration of a SEP is appropriate. There are a number of factors, however, to consider when determining whether community involvement is appropriate in any particular case.

One obvious factor to consider is the defendant's willingness to perform a SEP and to involve the community in considering possible SEP projects. Even if a defendant does not wish to participate actively in outreach to the community on SEP proposals, its willingness to consider projects generated by community sources is essential to the process. As noted above, there are many incentives for defendants to engage communities in SEP consideration. However, EPA cannot coerce a defendant to do a project or to accept projects proposed by the community.

Resources are another concern when evaluating whether and how to involve communities in SEP consideration. Direct community involvement in SEP consideration has obvious impacts on the time, money and effort that will be required to bring the action to conclusion. While the additional resource demands are not in themselves reasons not to include communities in SEP consideration, these impacts should be evaluated against the size and complexity of the enforcement action and how community involvement in SEP consideration may affect the Agency's ability to resolve enforcement actions within a reasonable time frame. Balancing enforcement impacts with the desire for community input may require creative approaches. In some cases it may be desirable to delay the community involvement until after the consent decree has been entered. For example, if the government and defendant agree on a particular project that satisfies the terms of the SEP Policy (*e.g.,* a greenway project in a particular area for a specified amount of acreage), they may agree to provide for community involvement in the SEP during the implementation of the consent decree (*e.g.,* in determining exactly which parcels of land to purchase for the greenway).

In general, those cases which have a large penalty at stake, where the violations have had a direct impact on the community and where community interest in the enforcement action is high may be appropriate for a broad and inclusive outreach effort. As the SEP Policy points out, community involvement may be most appropriate in cases where the range of possible SEPs is great and/or multiple SEPs may be negotiated. (SEP Policy, p. 19).

At the other end of the spectrum, routine cases which have relatively little potential for significant penalties, direct environmental impact on the community, or community interest may not be good candidates for a broad outreach effort. Between these two extremes, however, lie opportunities to tailor community involvement efforts to meet the needs and limitations of a particular enforcement action.

Generally, the important factors to be considered in determining whether and to what extent to involve communities once the defendant has indicated a desire to perform a SEP are:

1. The amount of the proposed penalty and the settlement amount which is likely to be mitigated by the SEP;
2. The impact of the violations on the community;
3. The level of interest of the community in the facility and the potential SEP; and
4. The willingness of the defendant to solicit and respond in a meaningful way to community input.

B. SEP Banks

''SEP Banks'' or ''SEP Libraries'' are Regional inventories of potential SEPs that can be consulted in individual cases where the defendant requests assistance in identifying appropriate SEPs. SEP Banks can provide an important avenue for community input on SEPs, that can be used when the size of the case or the timing of the enforcement process does not allow for direct community participation. SEP Banks generally are more acceptable to defendants than broad outreach efforts and can help to avoid raising unrealistic community expectations about the likelihood of a particular project being performed by a particular party.

The SEP Bank inventory can include specific projects identified as priorities by EPA, communities, or non-governmental organizations. EPA can solicit ideas for the SEP Bank through town meetings, public hearings, or meetings with appropriate EPA staff. At the time ideas are collected for the SEP Bank, the enforcement action in which the SEP may ultimately be selected will be unknown. Therefore, it is important for communities to understand that inclusion of a SEP in the SEP Bank does not ensure that the project will be implemented. All SEP Policy requirements should be applied in the context of the enforcement action to determine whether the proposed SEP meets the requirements of the Policy. Before EPA considers a SEP Bank proposal in the context of an enforcement action, EPA should contact community leaders to try to determine whether the project is still a priority for the community.

III. Roles of Participants In SEP Consideration

Each participant's role in the process of SEP consideration will depend primarily on the circumstances of the case, including the defendant's willingness to solicit and include community input in the development of a SEP. However, there are several principles to keep in mind to ensure that each participant understands its responsibilities and obligations.

A. EPA

EPA should provide communities with information about SEP possibilities as early as possible in the settlement process, consistent with the requirements of the case and in accordance with confidentiality constraints. When providing information early in the process, EPA should avoid raising community expectations beyond realistic levels. When a defendant expresses interest in performing a SEP, EPA may play the primary role in facilitating community involvement. EPA should also establish milestones and objectives for community involvement, consistent with the litigation deadlines, to ensure that community involvement does not create any potential impediment to the progress of the litigation or to meeting court-imposed deadlines. EPA should make clear to the community that EPA remains the final decision-maker on all matters affecting the content and the process of community involvement, and that any SEP selected must meet the requirements of the SEP Policy.

B. The Defendant

The defendant has a responsibility to learn about the SEP Policy and to explain why any SEP it proposes conforms to the requirements of the Policy. The defendant should also explain why it favors any particular SEP proposal over another proposal. As noted above, in order to qualify for additional mitigation of civil penalties for community involvement, a defendant must ''actively'' participate by soliciting and incorporating public input. The defendant's knowledge of the community, the defendant's resources, and the defendant's cooperation can

help ensure the success of community participation. The following are just some of the many activities that a defendant may do when seeking to actively participate:

1. Identify communities and community representatives;
2. Provide facilities and resources for public outreach;
3. Participate actively in EPA's outreach efforts;
4. Analyze and evaluate SEP ideas proposed by the community;
5. Engage in discussion of SEP ideas with community representatives;
6. Add to or build upon SEP ideas proposed by the community;
7. Revise SEP proposals in response to community comments (whether presented directly by the community or through EPA)

Even if the defendant is actively soliciting and incorporating public input, EPA remains in control of community involvement and the final decision on SEPs.

C. Communities

Communities can participate most effectively when they are aware of the requirements of the SEP Policy, the general nature of the enforcement action, and are willing to work within EPA and court-imposed deadlines. Communities need to understand that not all community problems can be solved through SEPs and that federal law and the SEP Policy imposes a number of constraints on the types of activities that qualify as SEPs. Communities may benefit by trying to resolve any differences amongst themselves so that they may present clear and consistent proposals and recommendations.

IV. Timing for Community Outreach

EPA should establish deadlines and inform the community of those deadlines to maintain compliance with court-imposed deadlines and to help keep the enforcement case on track. In most cases, EPA will seek community input after the defendant shows an interest in performing a SEP and EPA knows the approximate amount of money available for a SEP. In some cases, when the defendant is particularly interested in settlement, this may occur shortly before or after the filing of the complaint. For example, it may occur during pre-filing negotiations. However, in many cases, the potential for settlement, the potential for the settlement to include a SEP, and the amount of money available for a SEP, will not be known until weeks, months, or years of litigation. Nonetheless, as discussed below, there are steps EPA can take even before the defendant shows interest in performing a SEP.

A. General Outreach

In some cases, EPA may begin community outreach very early in the enforcement process. For example, EPA may develop a communication strategy when developing the enforcement case. Several EPA offices may participate in the development of a communications strategy, including the Environmental Justice Regional Team, the geographical initiative teams, community outreach personnel, and other regional and headquarters offices, as resources permit. A communications strategy should include ways in which the community can be prepared to participate in SEP consideration, should that possibility arise. For example, EPA may mail non-case-specific information on enforcement and SEPs to community leaders to help them and their communities better understand SEP Policy requirements and be better prepared to participate in SEP consideration. In any event, EPA should track community interest and communicate significant developments to the community to help them participate effectively in SEP consideration.

B. Steps To Ensure a Smooth Process of Community Involvement

Once EPA determines that a SEP with community involvement is feasible, there are several steps that may smooth the way for such involvement.[4] First, if extensive community involvement is expected, the Regional Office may make an EPA regional employee with outreach experience available for consultation. Second, EPA should provide an outline of the SEP consideration process to community leaders, highlighting important matters, including the deadlines for decisions, and details for community involvement, *e.g.*, information about anticipated community meetings. EPA and the defendant should select the best approach to engage the community and to identify the priorities of the community or communities. EPA should advise the community of significant decisions about consideration of SEPs in a timely manner, including the initial decision to include the community in the development of a SEP. Finally, EPA should advise community members how they can obtain information about the status of the SEP consideration process. EPA should also make clear that EPA and the Department of Justice are the final decision-makers in selecting SEPs and determining appropriate penalties.

C. Making the Final Decision on a SEP

After EPA has gathered sufficient information from the community (or communities) and is close to making a decision on a SEP or SEPs, EPA may want to offer a limited opportunity for any final community input (within a clear and probably rather short deadline). If a number of SEPs are under consideration, EPA may want to ask the community to rank the proposed SEPs in order of priority to the community. Once a SEP is selected, EPA should explain why.

V. Tools and Techniques To Involve Communities in SEP Consideration

A. Identifying Communities

EPA should begin by deciding where to look for communities potentially affected by the violations. Where to look will generally depend on the nature of the enforcement action. For example, in an air toxics case, it may be appropriate to look at all communities within a certain radius of the defendant's facility. In a water quality case, the focus may be on communities downstream of the defendant's facility. Where a case involves right-to-know violations, the appropriate area may be based on a local emergency planning committee's jurisdiction.

After deciding where to look, EPA and/or the defendant should identify community members who may want to be involved in SEP consideration. EPA may rely on various internal and external resources, some of which are identified in Appendix A. A community may have diverse interests. By contacting a range of sources, EPA and/or the defendant may ensure that interested community members are not excluded. To be as inclusive as possible, EPA and/or the defendant may have to make a special effort to reach out to community members who face specific barriers to involvement, for example, language barriers or other socioeconomic barriers.

B. Conducting Outreach

Once the affected community or communities have been identified and the other circumstances described above have been met (*i.e.,* defendant is willing to do a SEP and the approximate amount of money for a SEP is known) EPA and/or the defendant can notify the community about the violation, possible SEPs, and the opportunity for

[4] Many of the steps taken for community outreach may be undertaken by the defendant, in consultation and coordination with EPA.

community involvement. As noted above, during negotiations with the defendant concerning SEPs, EPA must establish procedures, milestones, and deadlines for community involvement. EPA and/or the defendant should also maintain communications with representatives of the community. The list of outreach approaches included in Appendix B to this guidance may provide ideas for involving the community in SEP consideration.

C. Fostering a Good Relationship With the Community

EPA can take a number of relatively simple steps to foster a good relationship with the community and build and maintain trust among all parties. Communication of information to the community is one important aspect of fostering a good relationship. EPA should:

1. Ensure the community understands that the defendant must agree to do a SEP and that EPA cannot unilaterally impose SEPs;
2. Explain to the community its role in the SEP process while making clear that EPA and DOJ remain solely responsible for final SEP consideration;
3. Explain that a SEP is only one part of the overall settlement, which will generally also include penalty assessment and injunctive relief;
4. Advise the community that a SEP is an environmental project, which requires nexus between the SEP and the violation, and cannot be a direct payment of money to the community, and explain other limitations of federal law and the SEP Policy;
5. Advise the community of the milestones and deadlines in the enforcement action and ensure that the community understands the need to meet deadlines, as well as the time negotiations may take and the government's process for approval of settlements and SEPs;
6. Advise the community as milestones in the negotiation and the development of a SEP are reached.

There are a number of approaches EPA can use to effectively involve communities in SEP consideration, including:

1. Inform communities about Agency databases, such as ERNS, IDEA, the SEP Database, and Internet sources; [5]
2. Using local libraries as information repositories;
3. Employing creative approaches to educating communities;
4. Providing information in plain language and translating into languages other than English if resources allow.

EPA's credibility is another important factor in fostering a good relationship. The EPA case team may want to enlist help from other EPA employees familiar with the community or a community member to clearly present information to the community. Enlisting this additional help may be limited by available resources and expertise.

In some circumstances, EPA may want to use an independent third-party liaison to communicate with the community. Use of such liaisons will not be advisable for every SEP, but could be especially helpful in complex cases. Before entering into any contract to use a third-party liaison, certain questions should be resolved, such as: Who pays for the liaison? How will the process be managed to avoid delay and miscommunication? How will EPA resolve any community dissatisfaction with the liaison?

There are also a number of factors EPA should consider before electing to use a liaison:

1. The constituency of the community. For example, large communities or communities with many factions may be better served by an independent third-party liaison that possesses the expertise to manage the myriad concerns such communities may have.
2. The complexity of the case. In a complex case, third-party liaisons may alleviate resource burdens and expedite the consideration process.
3. The liaison's credibility with EPA, the defendant, and with the community, and any additional costs associated with using a liaison.

In determining which liaison to use, EPA should consider the following issues:

1. The variety of individuals or groups who are useful for identifying affected communities. Many of these people can function as liaisons;
2. The amount and quality of experience a liaison has conducting outreach;
3. Recommendations or suggestions from the affected community or the defendant.

If Alternative Dispute Resolution (''ADR'') is used to assist in settling the case, a third-party neutral may already be available to contact the community for input on SEPs. Even where ADR is not used, EPA's lists of third-party neutrals and ADR procedures for their hiring may be useful.

VI. Managing Confidentiality Concerns

SEPs usually will be developed in the context of settlement negotiations. Confidentiality between the government and the defendant is essential to the exchange of ideas and exploration of settlement options. Because of this, EPA must consider how to provide information to the public to facilitate their involvement in SEP consideration and development without undermining the confidentiality of settlement negotiations. Much of the information developed by the government may be privileged and therefore not appropriate for release to the public. In addition, a defendant may provide information to the government that must be kept confidential. For example, a defendant may provide confidential business information (''CBI'') to EPA. CBI, by law, cannot be provided to the public.[6] Thus, each case will have limits on what EPA may make available to the public.[7] Because of the voluminous documentation in many enforcement cases it may not always be practicable for EPA to undertake the privilege and confidentiality reviews necessary to make information available, but where it is able EPA should do so. In judicial cases, the Department of Justice will also retain authority to determine what information can be released to the community.

The provision of information to the community should enhance the community's ability to provide meaningful input and to develop realistic expectations about what SEPs are possible. Thus, when practicable, EPA should make relevant, non-privileged and non-confidential information available to the public. The types of information that may be provided to the community, where practicable, are notices of violation, complaints, and other documents filed with a Regional Hearing Clerk,

[5] ERNS stands for Emergency Response Notification System. IDEA stands for Integrated Database for Enforcement Analysis. The SEP Database contains descriptions of SEP projects included in the settlement of Agency enforcement actions. These databases can be accessed through EPA's website at www.epa.gov.

[6] See 40 CFR part 2, subpart B.

[7] Regardless of the case at issue, several categories of documents and information must be kept confidential. These include: (1) the parties' settlement offers; (2) EPA's penalty positions, disclosure of which could compromise the government's case if settlement fails; (3) information claimed as CBI pursuant to 40 CFR part 2, subpart B; (4) privileged documents (*e.g.,* attorney work-product, attorney-client communications, etc.); (5) National Security Information; and (6) information subject to the privacy requirements of FOIA or other statutes. EPA's policy on withholding enforcement sensitive information that may be considered exempt from the Freedom of Information Act (''FOIA'') conforms with FOIA's ''presumption of disclosure.'' However, if such documents would interfere with enforcement proceedings, EPA may chose to withhold such information. See Memorandum of Steven A. Herman, dated August 15, 1996, entitled ''Public Release of EPA Enforcement Information.''

Administrative Law Judge, or court, the facility's monitoring reports, and EPA, state, or local inspection reports. EPA should encourage the defendant to agree to share information with the community, within parameters discussed above. This should help EPA and the defendant establish a positive relationship with the community and enable the community to participate in the SEP process more effectively.

VII. Conclusion

EPA is committed to involving communities in the consideration of SEPs in appropriate cases. This guidance is intended to facilitate community involvement in SEP consideration and helps effectuate the best possible SEPs in settlement of enforcement cases in a manner that promotes mutual trust and confidence, and builds positive relationships between the community and the Agency.

This document is guidance intended for the use of EPA personnel and does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person. This guidance is not intended to supercede any statutory or regulatory requirements, or EPA policy. Any inconsistencies between this guidance and any statute, regulation, or policy should be resolved in favor of the statutory or regulatory requirement, or policy document, at issue.

Appendix A—Resources for Identifying Communities

Below are some suggested resources within and outside of EPA that may be useful in targeting community outreach efforts.

Suggested Internal Sources

1. Community involvement coordinators at OERR's Community Involvement and Outreach Center;
2. Headquarters offices, including: Office of Environmental Justice, American Indian Environmental Office, Federal Facilities Enforcement Office;
3. Colleagues in other media programs or regions;
4. Regional offices or coordinators who handle community involvement, environmental justice, tribal issues, or Community-Based Environmental Protection (CBEP);
5. ''Model Plan for Public Participation'' (November, 1996), developed by the Public Participation and Accountability Subcommittee of the National Environmental Justice Advisory Council (available at NEJAC website: www.epa.gov/oeca/oej/nejac).

Suggested External Sources

1. State, local, or tribal governments;
2. Educational or spiritual organizations;
3. Other federal agencies;
4. Neighborhood organizations or groups, and individuals in neighborhoods closest to the defendant's facility;
5. Community activists;
6. Environmental and environmental justice organizations and groups;
7. Local unions, business groups, and civic groups;
8. The defendant or other members of the regulated community (*i.e.,* trade associations);
9. Local newspapers, radio, television, local Internet sites.

Appendix B—Community Outreach Techniques

*This list is intended to provide a library of options available for use in conducting community outreach, and is not intended to suggest that all of these techniques be used in any given case.

1. Interview: Face-to-face or telephone discussions with community members provide information about local concerns and issues. A significant time commitment may be required to gather feedback representative of the community.
2. Small Group Meeting: Convening community members in a local meeting place stimulates dialogue, generates information, and may build rapport among participants.
3. Focus Group Meeting: Focus group participants are convened by a trained facilitator to provide answers to specific questions. This direct approach is an efficient information-gathering tool if participants represent a cross-section of the community.
4. Public Meeting: Public meetings are useful for hearing what people have to say about current issues and engaging community members in the process. At public meetings, EPA should focus on active listening and learning from the public.
5. Public Availability Session/Open House: A public availability session is a less structured alternative to a public meeting that provides everyone an opportunity to ask questions, express concerns, react to what is being proposed, and make suggestions. Typically, a public official announces she or he will be available at a convenient time and place where community members can talk informally.
6. Public Notice: Public notices in the print media or on radio and television are a relatively inexpensive way to publicize community participation opportunities. In addition to the mainstream media, minority publications, church bulletins and other such vehicles offered by local organizations can reach a more diverse audience.
7. Workshop: Workshops are participatory seminars to educate small groups of citizens on particular site issues. Workshops involve and empower participants; but they, too, can be time-intensive.
8. Site Tour: Site tours can familiarize citizens, the media and local officials with the nature of environmental concerns affecting a community near a specific site. Tours may result in better communication among the community, facility, and Agency, however, they are frequently resource-intensive to arrange and conduct.
9. Information Repository: An information repository is a project file containing timely information on site-specific activities and accurate detailed and current data about a site or enforcement action. Project files are typically kept at convenient public locations, *e.g.,* libraries, and publicized through various media.

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ENVIRONMENTAL PROTECTION AGENCY

[OPP–00658; FRL–6556–4]

Pesticides; Policy Issues Related to the Food Quality Protection Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: To assure that EPA's policies related to implementing the Food Quality Protection Act are transparent and open to public participation, EPA is soliciting comments on the pesticide draft science policy paper entitled ''Proposed Guidance on Cumulative Risk Assessment of Pesticide Chemicals That Have a Common Mechanism of Toxicity.'' This document is the eighteenth in a series concerning science policy papers related to the Food Quality Protection Act and the Tolerance Reassessment Advisory Committee.

DATES: Comments for the draft science policy paper, identified by docket control number OPP–00658, must be received on or before August 28, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00658 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Kathleen Martin, Environmental Protection Agency (7509C), 1200 Pennsylvania, Ave., NW., Washington, DC 20460; telephone number: (703) 308–2857; fax: (703) 305–5147; e-mail: martin.kathleen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Pesticide Producers	32532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action affects certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under ''FOR FURTHER INFORMATION CONTACT.''

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, the draft science policy paper, and certain other related documents that might be available from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides. On the Office of Pesticide Programs' Home Page select ''FQPA'' and then look up the entry for this document under ''Science Policies.'' You can also go directly to the listings at the EPA Home Page at http://www.epa.gov. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can go directly to the **Federal Register** listings http://www.epa.gov/fedrgstr.

2. *Fax-on-demand*. You may request a faxed copy of the draft science policy paper, as well as supporting information, by using a faxphone to call (202) 401–0527. Select item 6049 for the paper entitled ''Proposed Guidance on Cumulative Risk Assessment of Pesticide Chemicals That Have a Common Mechanism of Toxicity.'' You may also follow the automated menu.

3. *In person*. The Agency has established an official record for this action under docket control number OPP–00658. In addition, the documents referenced in the framework notice, which published in the **Federal Register** on October 29, 1998 (63 FR 58038) (FRL–6041–5) have also been inserted in the docket under docket control number OPP–00658. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00658 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania, Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00658. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under ''FOR FURTHER INFORMATION CONTACT.''

E. What Should I Consider as I Prepare My Comments for EPA?

EPA invites you to provide your views on the various draft science policy papers, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide solid technical information and/or data to support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate.

5. Indicate what you support, as well as what you disagree with.

6. Provide specific examples to illustrate your concerns.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify docket control number OPP–00658 in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background Information About the Tolerance Reassessment Advisory Committee

On August 3, 1996, the Food Quality Protection Act of 1996 (FQPA) was signed into law. Effective upon signature, the FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard (''a reasonable certainty of no harm'') for pesticide residues in foods to assure protection from unacceptable pesticide exposure; provided heightened health protections for infants and children from pesticide risks; required expedited review of new, safer pesticides; created incentives for the development and maintenance of effective crop protection tools for farmers; required reassessment of existing tolerances over a 10-year period; and required periodic re-evaluation of pesticide registrations and tolerances to ensure that scientific data supporting pesticide registrations will remain up-to-date in the future.

Subsequently, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on some of the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs. The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that met FQPA's standard, but that could be revisited if additional information became available or as the science evolved. As EPA's approach to implementing the scientific provisions of FQPA has evolved, the Agency has sought independent review and public participation, often through presentation of the science policy issues to the FIFRA Scientific Advisory Panel (SAP), a group of independent, outside experts who provide peer review and scientific advice to OPP.

In addition, as directed by Vice President Albert Gore, EPA has been working with the U.S. Department of Agriculture (USDA) and another subcommittee of NACEPT, the Tolerance Reassessment Advisory Committee (TRAC), chaired by the EPA Deputy Administrator and the USDA Deputy Secretary, to address FQPA issues and implementation. TRAC comprises more than 50 representatives of affected user, producer, consumer, public health, environmental, states and other interested groups. The TRAC has met six times as a full committee from May 27, 1998 through April 29, 1999.

The Agency worked with the TRAC to ensure that its science policies, risk assessments of individual pesticides, and process for decision making are transparent and open to public participation. An important product of these consultations with TRAC is the development of a framework for addressing key science policy issues. The Agency decided that the FQPA implementation process and related policies would benefit from initiating notice and comment on the major science policy issues.

The TRAC identified nine science policy issue areas they believed were key to implementation of FQPA and tolerance reassessment. The framework calls for EPA to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In accordance with the framework described in a separate document published in the **Federal Register** of October 29, 1998 (63 FR 58038), EPA has been issuing a series of draft papers concerning nine science policy issues identified by the TRAC related to the implementation of FQPA. This document announces the availability of the draft science policy paper(s) as identified in the ''SUMMARY.''

III. Summary of ''Proposed Guidance on Cumulative Risk Assessment of Pesticide Chemicals That Have a Common Mechanism of Toxicity''

The Food Quality Protection Act of 1996 requires EPA to consider the cumulative effects to human health that can result from exposure to pesticides and other substances that have a common mechanism of toxicity. This document describes the process that OPP is developing for performing cumulative risk assessments. Such assessments will play a significant role in the evaluation of risks posed by pesticides, and will enable OPP to make regulatory decisions that fully protect public health and sensitive subpopulations, including infants and children.

The cumulative assessment of risk posed by exposure to multiple chemicals by multiple pathways (including food, drinking water, as well as from residential/non-occupational exposure to air, soil, grass, and indoor surfaces) presents a formidable challenge for OPP. Given that cumulative risk assessment is at an early phase of development, and will continue to evolve with experience and improved toxicological and exposure databases, the goal of this draft science policy paper is to describe the first generation of methods and approaches to the cumulative risk assessment process. Thus, this guidance for cumulative assessment should be viewed as a work in progress.

Before undertaking a cumulative risk assessment for a set of chemicals that have a common mechanism of toxicity, OPP will follow its procedures for identifying the chemicals that belong in that group (see ''Guidance for Identifying Pesticide Chemicals and Other Substances that Have a Common Mechanism of Toxicity,'' 64 FR 5796, February 5, 1999 (FRL–6060–7); also see OPP's Home Page at http://www.epa.gov/pesticides). This process involves the use of a weight-of-the-evidence approach to identify a list of candidate chemicals, a ''Common Mechanism Group'' (CMG), for which scientifically reliable data demonstrate a common toxic effect by a common mechanism of action.

Also before conducting a cumulative assessment, OPP will perform an aggregate risk assessment for each chemical in a CMG. OPP will follow the guidance described in the draft science policy paper entitled, ''Guidance for Performing Aggregate Exposure and Risk Assessments,'' which was issued for public comment on November 10, 1999 (64 FR 61343) (FRL–6388–8); also see OPP's Home Page at http://www.epa.gov/pesticides). Using this guidance, OPP will simultaneously consider the exposures from dietary (food), drinking water, and residential/non-occupational uses of each pesticide. If the combined exposure from these sources exceeds the level of concern, then OPP would take appropriate regulatory action.

When the aggregate risk assessments for individual chemicals in a CMG are completed, OPP will perform the cumulative risk assessment in the four steps summarized below: (1) Hazard assessment and characterization; (2) Dose response assessment and characterization; (3) Exposure assessment and characterization; and (4) Risk characterization. OPP will carry out steps 1 and 2 by using a weight-of-the-evidence approach to determine the toxic endpoint that occurs through a common mechanism for the chemicals in the CMG, and by establishing a common measure of toxic potency (''common point-of-departure'') on which the cumulative risk assessment is based. For steps 3 and 4, OPP will estimate exposure and risks for the dietary (food), residential/non-occupational and drinking water pathways. However, due to limitations

in currently available data and assessment methodologies, OPP will usually not be able to simply add exposures across these pathways. While OPP has extensive data for dietary (food) exposures, the data for residential/non-occupational and drinking water exposure are comparatively less. OPP is working to improve its ability to develop better estimates of exposure both through drinking water and from residential use. For example, OPP is exploring the use of surrogate/bridging data for pesticides with similar use patterns that can be used to estimate residential exposures that are similarly descriptive as the dietary exposure assessment. This approach is comparable to the approach currently used for worker exposure assessments using the Pesticide Handlers' Exposure Database (PHED) where data from different pesticides with similar use patterns are used to estimate likely exposures to other pesticides. In fact, OPP is currently developing a pilot cumulative assessment on a set of organophosphates (OPs). OPP plans to present this assessment to the SAP for review/comment when completed. The assessment will provide tangible examples of how surrogate/bridging data may be used in such an assessment. Lessons learned from this use of surrogate data will be used to update this guidance in the future.

When data on and methods for estimating exposure by different pathways—food, drinking water, residential use—are of appropriate quality, OPP will combine exposure estimates for a quantitative, cumulative risk assessment. In other circumstances, however, OPP can perform sophisticated, refined probabilistic exposure and risk assessments for food exposure, but may only be able to conduct single-point (''deterministic'') exposure and risk assessments for non-occupational exposures, and screening level modeling estimates for potential drinking water exposures. Hence, OPP does not believe that it is scientifically appropriate in most cases to add exposures across these pathways to obtain a cumulative total. Nevertheless, OPP will consider the exposures and risks from all pathways ''in parallel'' and at a minimum will develop comparative qualitative assessments in order to complete the cumulative assessment and to help inform what regulatory action may be necessary to assure the full protection of human health.

It is OPP's goal to be able to combine exposures across all pathways as soon as scientifically reliable data and methodologies are available to do so. Toward this end, the Agency is making a concerted effort to develop or obtain new data and more sophisticated exposure and risk assessment methodologies. EPA's Office of Research and Development is planning and conducting new studies concerning exposure to infants and children related to non-occupational routes of exposure. OPP has also called in data from registrants for several non-dietary routes of exposure including dermal contact and hand/object-to-mouth contact with contaminated surfaces and toys. OPP is also working collaboratively with the U.S. Geological Survey to develop new regression-based, predictive modeling tools which OPP expects will allow for improved estimates of pesticide concentrations in finished drinking water. And many registrants are conducting studies on their own initiative that are generating additional exposure data for food, drinking water, and residential/non-occupational sources. Moreover, OPP is continuously developing and proposing through its science policies better methods for assessing exposure and risk. Finally, through publication of this draft science policy paper and others, OPP is seeking ideas, feedback, and recommendations from the SAP and the general public.

The guidance in this draft science policy paper lays down the following approaches and steps:

1. *Hazard assessment and characterization*. Hazard assessment and characterization emphasizes the analysis and integration of all relevant biological information in selecting the toxicological endpoint upon which to base the accumulation of the common hazard across multiple chemicals sharing a common mechanism of toxicity.

(a) *Weight-of-the-evidence*. A weight-of-the-evidence narrative should be included in the hazard characterization that clearly lays out a summary of the key evidence, describes the robustness of the data for characterizing the common mechanism of toxicity for each chemical member, characterizes the conditions under which the cumulative hazard may be expressed by route, pattern, duration and magnitude of exposure, and recommend the appropriate common toxicological endpoint(s) for dose-response assessment. Significant strengths, weaknesses, and uncertainties of the evidence are highlighted.

(b) *Common mechanism group*. A common mechanism group (CMG) is a group of pesticides determined to cause adverse effects by a common mechanism of toxicity. The CMG is defined using the previously released ''Guidance for Identifying Pesticide Chemicals and Other Substances that Have a Common Mechanism of Toxicity'' (64 FR 5796, February 5, 1999). Not all members of a CMG will necessarily be incorporated in the cumulative risk assessment.

2. *Dose-response assessment and characterization*. Dose-response assessment and characterization should provide a common and uniform basis for reliably determining each chemical member's relative toxic strength and contribution to the cumulative risk. For the common toxic endpoint, all dose-response assessments should include consideration of their relevance to assessing children's health risks by addressing whether key studies reflected dosing of adult age animals only.

(a) *Common point of departure*. A common point of departure (POD) on each chemical's dose-response curve is identified to determine its toxic potency relative to the other chemical members. This point of departure should be based on a common endpoint which is derived from studies using the same species/strain/sex and duration of exposure for each chemical member in the group. Thus, previous chemical-specific assessments and resulting reference doses may be inappropriate because they may be based on a different endpoint, strain, or duration of exposure.

(b) *Benchmark response or effective dose*. A common benchmark response or effective dose (ED) is the preferred point of departure to represent cumulative risk of the chemical group. Despite its limitations, the no-observed-adverse-effect-levels (NOAEL) will generally be used in the near term in many situations until the toxicological databases improve and permit reliable benchmark analysis.

(c) *Benchmark response or NOAEL*. After a benchmark response or NOAEL is designated for an individual chemical member, there may be chemical specific adjustments needed to normalize the response data across the chemical group to ensure a more nearly uniform point of departure.

(d) *Dose addition approaches*. Dose addition approaches are most appropriate to use for summing the cumulative hazard given that cumulative risk assessment will be based on chemicals sharing a common toxic effect that arises by a common mechanism of toxicity. Dose addition assumes that the chemicals of interest act on similar biological systems, behave similarly in terms of the primary physiologic processes (absorption,

metabolism, distribution, elimination), and elicit a common response. Thus, the cumulative margin of exposure approach or the relative potency factor approach are appropriate risk metric methods for normalizing exposure by accounting for the different relative toxic potencies of the group.

3. *Exposure assessment and characterization*. Exposure assessment and characterization for the cumulative risk assessment will, to the extent data permit, maintain the temporal and spatial linkages for the many factors defining a possible individual exposure. The assessment will be designed in cooperation with the risk manager to assure that all necessary questions regarding potential risk are answered, but that the assessment performed is consistent with the data available.

(a) *Aggregate assessment*. An aggregate assessment will be performed on each chemical that may be included in the cumulative risk assessment before the final assessment is designed. This step will ensure that the available data have been carefully evaluated with regard to their ability to describe the potential exposure of the population of interest to each chemical.

(b) *Focus on the major contributors to risk*. The cumulative assessment will focus on the major contributors to risk, permitting resources and risk mitigation activities to be developed that will most efficiently address likely risk reductions.

(c) *Data and exposure assessment methods' availability and quality*. Data and exposure assessment methods' availability and quality will also influence how comprehensive and refined an assessment can be performed. Data that lend themselves to distributional analyses should be used accordingly. Data that are less descriptive of the full range of potential exposures may be used in less comprehensive analyses. Where the quality of available data about exposure by different pathways varies greatly, cumulative assessments for individual pathways should be performed, but the exposure estimates for different pathways should not be combined quantitatively unless bridging data (surrogate data) are available. At a minimum, a qualitative assessment should be developed which covers topics such as comparative pathway analysis, high end exposure, variability, and uncertainty.

4. *Risk characterization*. The risk characterization contains the primary conclusions regarding the character and potential magnitude of the cumulative risk. Included in the characterization is a discussion of how well the data support the conclusions as well as identification of key uncertainties and uses of assumptions. The major chemical contributors to the cumulative risk, the scenarios of concern, and subpopulations of special concern including children, are also identified.

(a) A cumulative assessment group (CAG) is a subset of the CMG. The CAG is that group of pesticides selected for inclusion in the cumulative risk assessment. The chemicals in the CAG are judged to have a hazard and exposure potential that could result in the expression of a cumulative risk. Consideration of concurrent exposure is much greater for acute or short-term toxic effects because of the greater potential for more rapid onset of and recovery from the toxic effect. For chronic and cancer effects mediated through reversible precursor events, overlapping exposure should also be considered. For other chronic and cancer endpoints for which long-term exposure is necessary to cause the effect, concurrent exposures are not required for the chemicals to act by a common mechanism. Because of EPA's commitment to addressing those risks eliciting the greatest concern first, pesticides with essentially no exposure (as indicated by the single pesticide aggregate assessment) will be deferred from the CAG.

(b) The outcome of a cumulative risk assessment is viewed as important information that will help inform risk management decisions regarding possible mitigation options across all members of the CAG.

(c) There will not be one outcome but varying risk values for differing proportions of populations exposed to chances of adverse health effects resulting from different time scales of exposures.

(d) A composite group uncertainty factor is applied after estimating cumulative risk to account for inter-species and intra-species differences as well as uncertainties that are common and inherent to the chemical group.

In September 1999, EPA presented a preliminary draft of the hazard and dose response components of the draft science policy paper for review by the FIFRA SAP. The purpose of that review was to seek early comment from the SAP on the hazard and dose response analyses needed when accumulating risk from exposure to two or more chemicals that share a common mechanism of toxicity (i.e., guidance contained in chapters 3 and 5 of the draft science policy paper). The issues covered at the September SAP meeting included selection of chemicals, common end pont, and a point of departure; methods for estimating the cumulative effect of a common mechanism; and how to deal with uncertainty. Additionally, a preliminary case study was presented on organophosphorus pesticides illustrating the hazard and dose-response guidance. In November 1999, the SAP provided EPA comments on the September draft. A draft of chapters 4 and 6 of the draft science policy paper was also taken to the SAP in December 1999, for discussion of exposure and risk characterization components of this guidance document. The SAP's comments on the December draft were completed in February 2000. After the SAP comments and the public comments on the draft science policy paper are received and reviewed by the Agency, it will be reissued in a revised form for use within and outside of OPP.

The draft science policy paper discussed in this document is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, the policy in this guidance is not binding on either EPA or any outside parties. Although this guidance provides a starting point for EPA risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a policy should be abandoned.

IV. Questions/Issues

OPP invites public comment on the following issues and questions:

A. Issue 1. Selection of Chemicals for a Cumulative Risk Assessment

Chapter 3 of the draft science policy paper emphasizes that all chemicals which have been initially grouped by a common mechanism of toxicity are not necessarily appropriate for inclusion in a final cumulative risk assessment. There are both hazard and exposure considerations.

Question 1: Does chapter 3 clearly present additional hazard considerations that are needed to determine those chemical members which should be included in the final cumulative risk assessment?

B. Issue 2. Selection, Normalization, and Adjustment of the Point of Departure (PoD) for Cumulating the Common Toxicity

As discussed in chapter 5.1-5.2, a point of departure (i.e., a dose or

exposure metric corresponding to some fixed marker of toxicity) should be selected to sum the combined exposure for the chemical group. To the extent possible, the PoDs should reflect a uniform measure of the common toxic effect, which is produced by a common mechanism of toxicity, across the chemical members. A benchmark dose approach is preferred to derive the PoDs for each chemical member.

Question 2: In single chemical assessments, the Agency uses the upper bound estimates (i.e., the lower confidence limit on dose) for both cancer (called LED) and noncancer benchmark dose assessment. The concern has been raised, however, that summing upper bounds of multiple compounds may result in a exaggerated risk. Do you agree that it is more appropriate to sum the central estimates (i.e., ED) rather than combining upper bounds in the cumulative risk assessment of multiple chemicals? If not, why not?

C. Issue 3. Incorporation of Group Uncertainty Factors

As discussed in chapter 5.3, traditionally one or more of the uncertainty factors (UF) are used to derive a Reference Dose (RfD) for a single chemical. There are five uncertainty factors that are considered to account for the following extrapolations: LOAEL to NOAEL (UFL), subchronic NOAEL to chronic NOAEL (UFS), experimental animal to humans (UFA), interhuman variation (UFH), and incomplete database to complete database (UFD). It is proposed that the extrapolations of LOAELs to NOAELs or subchronic NOAELs to chronic NOAELs be applied as adjustments of a chemical's PoD before estimating the cumulative risk. These adjustments are meant to be based on some scientific data that permits a reasonable extrapolation or interpolation rather than applied solely as a science policy default decision. EPA further proposes that other traditional uncertainty factors be treated as a composite ''group uncertainty factor'' that pertains to the chemical members as a whole. Thus, the intra-species and inter-species UFs and the database completeness UF are applied as a composite group factor after cumulative risk is estimated (i.e., not before on each chemical's PoD). The rationale of the group UF is based on the premise that these factors should be viewed for the group as a whole given that all the chemicals are anchored by a common toxic effect produced by a common mechanism. Additionally, one is not simply evaluating risk in the context of a single chemical data base but the database for all the chemicals in the assessment. The advantage of a group uncertainty factor is that it allows one to separate the resulting risk that is based on scientific adjustments from judgmental policy decisions to account for uncertainty. Finally, EPA proposes that an FQPA safety factor decision be applied for the group rather than on individual pesticides.

Question 3: Do you agree with this approach, and does the draft science policy paper clearly describe the rationale and guidance for the implementation of chemical specific adjustment factors and of a group UF for the cumulative risk assessment? Has the draft guidance clearly presented the limitations and strengths of the group UF approach?

D. Issue 4. Methods for Estimating the Cumulative Toxicity

As discussed in chapter 5.6, one of the steps in the cumulative risk assessment process will be to select a method to cumulate dose or exposures. This method will serve to normalize differences in the toxic potencies among the chemicals in the cumulative assessment. Precedence in the Agency's 1986 and revised 1999 ''Guidance for Conducting Health Risk Assessment of Chemical Mixtures'' (http://www.epa.gov/ncea/pdfs/mixtures.pdf) describes several techniques for estimating risk to multiple chemicals. The cumulative guidance focuses on the component-based dose addition methods used in the EPA's chemical mixture assessment guidance document. Two methods, a margin-of-exposure approach and an approach using relative potency factors, are presented.

Question 4a: Do you agree that both methods are valid to consider for estimating cumulative risk associated with exposures to chemical that cause a common toxic effect by a common mechanism? Has the draft document clearly described these two approaches and their strengths and limitations? Are there other methods that OPP should consider?

Question 4b: EPA anticipates that most mechanisms of toxicity encountered currently will be nonlinear dose-response relationships. Nevertheless, for mechanisms of toxicity consistent with linear dose-response relationships, do you agree that using the relative potency factor approach by summing the slopes of the dose-response curves is an appropriate method? If not, what methods would you recommend for low-dose linear extrapolations of risk?

E. Issue 5. Case Study

In Appendix A of the draft science policy paper is a case study on organophosphorus pesticides.

Question 5: Does this case study provide a clear example of the application of the hazard and dose-response elements of the draft guidance?

F. Issue 6. Input Parameters

There are several types of data available for pesticide exposure assessment (e.g., field trial data, monitoring data, percent crop treated, label usage). For the food pathway, monitoring data are available from the USDA Pesticide Data Program (PDP). OPP conducts the majority of its drinking water assessments by calculating a screening level value. Similarly, residential assessments are conducted using the draft residential Standard Operating Procedures (SOPs) which also provide a screening level assessment. Thus, given PDP, the assessment of the food pathway will, in many cases, be based on higher quality data than for the residential and drinking water pathways where usually only screening values are available. Because of the different quality of data that will be encountered when conducting a cumulative exposure assessment, the concern is raised that the value and benefit of high quality monitoring data will be lost if combined with extrapolated exposure values from screening models.

Question 6.1: Please comment on how this concern could be addressed. For instance, should OPP at this time conduct separate pathway assessments for food, drinking water, and residential exposures so as to avoid combining higher quality monitoring data with more limited screening level data?

Question 6.2: Please comment on whether there are other means of dealing with existing data to reduce the uncertainties about exposure values derived from screening approaches.

Question 6.3: Please comment on whether and how OPP could incorporate quantitative uncertainty analyses in the overal cumulative risk assessment when OPP uses data of varying quality.

Question 6.4: Is it appropriate to extrapolate food exposure from residue field trials and use/usage information if food monitoring data such as USDA's PDP data are not available?

G. Issue 7. Deferral Criteria

OPP is proposing that deferral criteria be applied to ''negligible'' sources of risk in a full cumulative risk assessment. OPP believes that this

approach will permit a better focus on the more important sources of risk. It will also assist the risk manager in understanding and evaluating sources of risk that may provide the greatest benefit with risk mitigation activities.

Question 7.1: Please comment on whether the deferral criteria discussed in chapters 4 and 6 appear to be reasonable. Are there other exclusionary criteria that should be considered?

Question 7.2: Should OPP establish more specific criteria, for example, not only the magnitude of the exposure resulting from a particular chemical, use pattern or pathway, but also the size of the exposed population group?

H. Issue 8: National and Regional Exposures

The potential for people to encounter overlapping exposures to different pesticides will be influenced by many factors. One important consideration is the geographic effects and seasonal uses of pesticides. Thus, a framework is proposed for assessing different pathways of exposure that are essentially driven by these considerations. OPP believes that the food pathway should be approached on both a national and regional scale to account for both national and regional distribution of treated commodities. However, the OPP believes that residential and drinking water pathways are more appropriately dealt with on a regional or multi-state basis, since there is no single, national source of drinking water; and residential exposures may be driven by regional use patterns.

Question 8.1: Please comment on whether the concept of developing a series of cumulative assessments on a geographic scale for different pathways is reasonable.

I. Issue 9: Case Study

Cumulative risk assessment is at an early stage of development. Furthermore, there is very limited experience in conducting such assessments. Thus, the development of case studies using actual data are critical to refining useful and practical guidance, and to identifying future research and testing needs. OPP is taking a step wise approach to the development of such case studies by starting with simple examples and moving toward more complex situations.

Attached is a case study that uses actual food residue data on three pesticides and evaluates only a single pathway/route/duration of exposure. Certain assumptions were made in the case study. In single chemical exposure assessment, for example, nondetects are assumed to be one half the level of detection and composite samples are decomposited. In this case study, for illustrative purposes, nondetects were assumed to be zero, the samples were not decomposited, and surrogate data were not used.

Question 9.1: Given that an important goal of the cumulative assessment is to reliably determine sources of concern from a multi-chemical exposure, please comment on to what extent is it appropriate to apply standard practices and assumptions used in single chemical assessments.

V. Policies Not Rules

The draft science policy paper discussed in this document is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, the policy in this guidance is not binding on either EPA or any outside parties. Although this guidance provides a starting point for EPA risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a policy should be abandoned.

EPA has stated in this document that it will make available revised guidance after consideration of public comment. Public comment is not being solicited for the purpose of converting any policy document into a binding rule. EPA will not be codifying this policy in the Code of Federal Regulations. EPA is soliciting public comment so that it can make fully informed decisions regarding the content of each guidance document.

The ''revised'' guidance will not be unalterable. Once a ''revised'' guidance document is issued, EPA will continue to treat it as guidance, not a rule. Accordingly, on a case-by-case basis EPA will decide whether it is appropriate to depart from the guidance or to modify the overall approach in the guidance. In the course of inviting comment on each guidance document, EPA would welcome comments that specifically address how a guidance document can be structured so that it provides meaningful guidance without imposing binding requirements.

List of Subjects

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

Dated: June 22, 2000.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–16634 Filed 6–29–00; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–6727–5]

Draft NPDES General Permits for Water Treatment Facility Discharges in the States of Maine, Massachusetts, and New Hampshire

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices of Draft NPDES General Permits—MEG640000, MAG640000, and NHG640000.

SUMMARY: The Director of the Office of Ecosystem Protection, EPA—New England, is issuing Notice of Draft National Pollutant Discharge Elimination System (NPDES) general permits for water treatment facility discharges to certain waters of the States of Maine, Massachusetts, and New Hampshire for the purpose of reissuing the current permit which expired on January 9, 2000. These general NPDES permits establish notice of intent (NOI) requirements, effluent limitations, standards, prohibitions and management practices for the water treatment facility discharges. Owners and/or operators of facilities discharging effluent from water treatment facilities including those currently authorized to discharge under the expired general permit will be required to submit to EPA—New England, a notice of intent to be covered by the appropriate general permit and will receive a written notification from EPA of permit coverage and authorization to discharge under one of the general permits. *The eligibility requirements are discussed in detail under section D.2.b and the reader is strongly urged to go to that section before reading further.* This general permit does not cover new sources as defined under 40 CFR 122.2.

DATES: For comment period: interested persons may submit comments on the draft general permits as part of the administrative record to the Environmental Protection Agency, New England Region, at the address given below no later than July 31, 2000. The general permit shall be effective on the date specified in the final general permit published in the **Federal Register** and will expire five years from the final publication date of the **Federal Register**.

ADDRESSES: The draft permit is based on an administrative record available for public review at the Environmental Protection Agency, Office of Ecosystem Protection (CPE), 1 Congress Street, Suite 1100, Boston, Massachusetts 02114–2023. The following **FACT SHEET AND SUPPLEMENTARY INFORMATION** section sets forth principal facts and the significant factual, legal, and policy questions considered in the development of the draft permits. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the draft permit may be obtained between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday excluding holidays from: Suprokash Sarker, Office of Ecosystem Protection, Environmental Protection Agency, 1 Congress Street, Suite 1100, Boston, MA 02114–2023, telephone: 617–918–1693.

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Changes From the Previous Permit

- General Permits for each of the states of ME, MA and NH are presented separately.
- State of NH—limits of pH flexibility is added.
- All States—commingling of effluent from water treatment facility is allowed so long as the effluent can be monitored before it mixes with other streams of wastewater.
- Notification by Permittees, Geographic Area and Administrative Aspects (request to be covered and eligibility to apply) are transferred from Fact Sheet and Supplemental Information to Part I, Permit Section I.D.

Fact Sheet and Supplementary Information

I. Introduction

The Director of the Office of Ecosystem Protection, EPA-New England, is issuing draft general permits for water treatment facility discharges to certain waters of the States of Maine, Massachusetts, and New Hampshire. This notice contains part I of the draft general NPDES permits and part II, Standard Conditions.

II. Coverage of General Permits

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit unless such a discharge is otherwise authorized by the Act. Although such permits are generally issued to individual discharges, EPA's regulations authorize the issuance of ''general permits'' to categories of discharges (see 40 CFR 122.28). EPA may issue a single, general permit to a category of point sources located within the same geographic area whose discharges warrant similar pollution control measures.

A. The Director of an NPDES permit program is authorized to issue a general permit if there are a number of point sources operating in a geographic area that:

1. Involve the same or substantially similar types of operations;
2. Discharge the same types of wastes;
3. Require the same effluent limitations or operating conditions;
4. Require the same or similar monitoring requirements; and
5. In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

B. The similarity of the discharges prompted EPA to issue the December 9, 1994 general permit. When reissued, this permit will enable facilities currently covered under the expired general permit to maintain compliance with the Act and will extend environmental and regulatory controls to new dischargers and avoid a backlog of individual permit applications. Violations of a condition of a general permit constitute a violation of the Clean Water Act and subjects the discharger to the penalties in section 309 of the Act.

III. Exclusions

EPA has determined that this general permit will not be available to ''New Source'' dischargers as defined in 40 CFR 122.2 due to the site specific nature of the environmental review required by the National Environmental Policy Act of 1969 (NEPA), 33 U.S.C. 4321 *et seq.* for those facilities. ''New Sources'' must comply with New Source Performance Standards (NSPS) and are subject to the NEPA process in 40 CFR 6.600. Consequently EPA has determined that it would be more appropriate to address ''New Sources'' through the individual permit process.

Any owner or operator authorized by a general permit may request to be excluded from coverage of a general permit by applying for an individual permit. This request may be made by submitting a NPDES permit application together with reasons supporting the request. The Director may also require any person authorized by a general permit to apply for and obtain an individual permit. Any interested person may petition the Director to take this action. However, individual permits will not be issued for sources covered by these general permits unless it can be clearly demonstrated that inclusion under the general permit is inappropriate. The Director may consider the issuance of individual permits when:

A. The discharger is not in compliance with the terms and conditions of the general permit;

B. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

C. Effluent limitations guidelines are subsequently promulgated for the point sources covered by the general NPDES permit;

D. A Water Quality Management plan or Total Maximum Daily Load (TMDL) containing requirements applicable to such point sources is approved;

E. Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the

general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

F. The discharge(s) is a significant contributor of pollution or in violation of State Water Quality Standards for the receiving water;

Or

G. The discharge(s) is into impaired water on the Federal Clean Water Act 303(d) list for the State in question.

In accordance with 40 CFR 122.28(b)(3)(iv), the applicability of the general permit is automatically terminated on the effective date of the individual permit.

IV. Permit Basis and Other Conditions of the General NPDES Permit

A. Types of Discharge

Under this general permit, owners and operators of potable water treatment plants in Maine, Massachusetts and New Hampshire may be granted authorization to discharge process generated wastewaters into waters of the respective states as follows:

a. treated presedimentation underflow;

b. treated underflow from the coagulation/settling processes using aluminium compounds or polymers as coagulants; and

c. treated filter backwash water from filters.

This general permit shall apply specifically to operators that have a discharge from a point source such as a sludge settling lagoon or other device whereby comparable control of suspended solids is possible.

B. Effluent Limitations

1. Statutory Requirements

Section 301(a) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1311(a), makes it unlawful to discharge pollutants to waters of the United States without a permit. Section 402 of the Act, 33 U.S.C. 1342, authorizes EPA to issue NPDES permits allowing discharges that will meet certain requirements, including CWA sections 301, 304, and 401 (33 U.S.C. 1331, 1314, and 1341). Those statutory provisions state that NPDES permits must include effluent limitations requiring authorized discharges to: (1) meet standards reflecting specified levels of technology-based treatment requirements; (2) comply with State Water Quality Standards; and (3) comply with other state requirements adopted under authority retained by states under CWA section 510, 33 U.S.C. 1370.

EPA is required to consider technology and water quality requirements when developing permit limits. 40 CFR part 125, subpart A sets the criteria and standards that EPA must use to determine which technology-based requirements, requirements under section 301(b) of the Act and/or requirements established on a case-by-case basis under section 402(a)(1) of the Act, should be included in the permit.

The Clean Water Act requires that all discharges, at a minimum, must meet effluent limitations based on the technology-based treatment requirements for dischargers to control pollutants in their discharge. Section 301(b)(1)(A) of the Act requires the application of Best Practicable Control Technology Currently Available (BPT) with the statutory deadline for compliance being July 1, 1977, unless otherwise authorized by the Act. Section 301(b)(2) of the Act requires the application of Best Conventional Control Technology (BCT) for conventional pollutants, and Best Available Technology Economically Achievable (BAT) for non-conventional and toxic pollutants. The compliance deadline for BCT and BAT is as expeditiously as practicable but in no case later than three years after the date such limitations are promulgated and in no case later than March 31, 1989.

2. Technology-Based Effluent Limitations

EPA has not promulgated National Effluent Guidelines for water treatment facility discharges. EPA also believes that the limits established to meet the Water Quality Standards discussed below are sufficient to satisfy BAT/BCT described in section 304(b) of the Act.

3. Water Quality Based Effluent Limitations

Under Section 301(b)(1)(C) of the Act, discharges are subject to effluent limitations based on water quality standards. Receiving stream requirements are established according to numerical and narrative standards adopted under state and/or federal law for each stream use classification. Section 401 of the CWA requires that EPA obtain State certification which ensures that all water quality standards and other appropriate requirements of state law will be satisfied. Regulations governing State certification are set forth in 40 CFR 124.53 and 124.55.

The States of Maine, Massachusetts, and New Hampshire have narrative criteria in their water quality regulations (see Maine Title 38, Article 4–A, Section 420 and Section 464.4.A.(4); Massachusetts 314 CMR 4.05(5)(e); and New Hampshire Part Env-Ws 1703.21) that prohibits toxic discharges in toxic amounts. The permit does not allow for the addition of materials or chemicals in amounts which would produce a toxic effect to any aquatic life.

Water quality standards applicable to water treatment facility discharges covered by this general permit include TSS and pH for all states; limits of chlorine and aluminum for the state of Maine. The limitations for TSS, pH, chlorine and aluminum are based upon limitations in the existing permit in accordance with the anti-backsliding requirements found in 40 CFR 122.44(1). A summary of the limits and testing requirements for each state is described below:

Maine: Limits of monthly average and maximum daily TSS, pH, Chlorine and Aluminum. Testing requirements of LC50 and C–NOEC.

Massachusetts and New Hampshire: Limits of monthly average and maximum daily TSS and pH. Testing requirements for Chlorine, Aluminum, LC50 and C–NOEC.

The state of New Hampshire may consider a change in pH under certain conditions. The following language reveals when pH can be changed for the state of New Hampshire:

The pH limits in the draft permit remain unchanged from the existing permit, however, language has been added to this draft permit allowing for a change in pH limit(s) under certain conditions as per State Permit Conditions (part I.C.2.a.). A change would be considered if the applicant can demonstrate to the satisfaction of NHDES-WD that the in-stream pH standard will be protected when the discharge is outside the permitted range, then the applicant or NHDES–WD may request (in writing) that the permit limits be modified by EPA to incorporate the results of the demonstration.

Anticipating the situation where NHDES–WD grants a formal approval changing the pH limit(s) to outside the 6.5 to 8.0 Standard Units (S.U.), EPA has added a provision to this draft permit (see New Hampshire part I.C.1.g.). That provision will allow EPA to modify the pH limit(s) using a certified letter approach. This change will be allowed as long as it can be demonstrated that the revised pH limit range does not alter the naturally occurring receiving water pH. Reference part I.C.2.a. STATE PERMIT CONDITIONS in that permit. However, the pH limit range cannot be less restrictive than found in the applicable National Effluent Limitation Guideline for the facility or to a default range of 6.0 to 9.0 S.U. in the situation of no

applicable guideline, whichever is more stringent.

If the State approves results from a pH demonstration study, this permit's pH limit range can be relaxed in accordance with 40 CFR 122.44(l)(2)(i)(B) because it will be based on new information not available at the time of this permit's issuance. This new information includes results from the pH demonstration study that justifies the application of a less stringent effluent limitation. EPA anticipates that the limit determined from the demonstration study as approved by the NHDES-WD will satisfy all effluent requirements for this discharge category and will comply with New Hampshire's Surface Water Quality Regulations amended on September 30, 1996.

C. Antidegradation Provisions

The conditions of the permit reflect the goal of the CWA and EPA to achieve and maintain water quality standards. The environmental regulations pertaining to the State Antidegradation Policies which protect the State's surface waters from degradation of water quality are found in the following provisions: Maine Title 38, Article 4–A, Section 464.4.F.; Massachusetts Water Quality Standards 314 CMR 4.04 *Antidegradation Provisions* ; and New Hampshire RSA 485–A:8, VI Part Env-Ws 1708.

This general permit does not apply to any new or increased discharge to any outstanding national resource water or the territorial seas. It also does not apply to any new or increased discharge to other waters unless the discharge is shown to be consistent with the state's antidegradation policies. This determination shall be made in accordance with the appropriate State Antidegradation implementation procedures. EPA will not authorize these discharges under the general permit until it receives a favorable antidegradation review and certification from the States.

D. Monitoring and Reporting Requirements

Effluent limitations and monitoring requirements which are included in the general permit describe the requirements to be imposed on the facilities to be covered.

Facilities covered by the final general permits will be required to submit to EPA, New England Region and the appropriate State authority, a Discharge Monitoring Report (DMR) containing effluent data. The frequency of reporting is determined in accordance with each State's provisions (see the individual State permits).

The monitoring requirements have been established to yield data representative of the discharge under authority of section 308(a) of the Act and 40 CFR 122.41(j), 122.44(i) and 122.48, and as certified by the State.

E. Endangered Species

The proposed limits are sufficiently stringent to assure water quality standards, both for aquatic life protection and human health protection, will be met. The effluent limitations established in these permits ensure protection of aquatic life and maintenance of the receiving water as an aquatic habitat. The Region finds that adoption of the proposed permits is unlikely to adversely affect any threatened or endangered species or its critical habitat. EPA is seeking written concurrence from the United States Fish and Wildlife Service and National Marine Fisheries Service on this determination.

F. Standard Permit Condition

40 CFR 122.41 and 122.42 must be complied with. Specific language will be provided to permittees in part II of the permit

G. State (401) Certification

Section 401 of the CWA provides that no Federal license or permit, including NPDES permits, to conduct any activity that may result in any discharge into navigable waters shall be granted until the State in which the discharge originates certifies that the discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the CWA. The section 401 certification process is underway in all States. In addition, EPA and the Commonwealth of Massachusetts jointly issue the final permit.

H. The Coastal Zone Management Act

The Coastal Zone Management Act (CZMA), 16 U.S.C. 1451 *et seq.*, and its implementing regulations (15 CFR part 930) require that any federally licensed activity affecting the coastal zone with an approved Coastal Zone Management Program (CZMP) be determined to be consistent with the CZMP. In the case of general permits, EPA has the responsibility for making the consistency certification and submitting it to the state for concurrence. EPA has requested the MEDEP, Division of Water Resource Regulation, 17 State House, Augusta, ME 04333; the Executive Office of Environmental Affairs, MACZM, 100 Cambridge Street, Boston, MA 02202; and the Office of State Planning, New Hampshire Coastal Program, 2½ Beacon Street, Concord, NH 03301, to provide a consistency concurrence that the proposed general permit is consistent with the ME, MA and NH Coastal Zone Management Program respectively.

I. Environmental Impact Statement Requirements

The general permits do not authorize discharges from any new sources as defined under 40 CFR 122.2. Therefore, the National Environmental Policy Act, 33 U.S.C. 4321 *et seq.*, does not apply to the issuance of these general NPDES permits.

J. National Historic Preservation Act of 1966, 16 U.S.C. SS470 et seq.

Facilities which adversely affect properties listed or eligible for listing in the National Registry of Historic Places under the National Historic Preservation Act of 1996, 16 U.S.C. SS470 *et seq.* are not authorized to discharge under this permit.

K. Essential Fish Habitat

Under the 1996 Amendments (Public Law 104–267) to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.* (1998)), EPA is required to consult with NMFS if EPA's action or proposed actions that it funds, permits or undertakes, ''may adversely impact any essential fish habitat.'' 16 U.S.C. 1855(b). The Amendments broadly define ''essential fish habitat'' (EFH) as ''waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.'' 16 U.S.C. 1802(10). Adverse impact means any impact which reduces the quality and/or quantity of EFH 50 CFR 600.910(a). Adverse effects may include direct (*e.g.,* contamination or physical disruption), indirect (*e.g.,* loss of prey, reduction in species' fecundity), site-specific or habitat-wide impacts, including individual, cumulative or synergistic consequences of actions. *Id.*

Essential Fish Habitat is only designated for fish species for which federal Fisheries Management Plans exist. 16 U.S.C. 1855(b)(1)(A). EFH designations for New England were approved by the U.S. Department of Commerce on March 3, 1999.

The proposed limits for this general permit are sufficiently stringent to assure that state water quality standards will be met. The effluent limitations established in these permits ensure protection of aquatic life and maintenance of the receiving water as an aquatic habitat. The Region finds that adoption of the proposed permits is unlikely to adversely affect any fish or shellfish currently listed with a

Fisheries Management Plan or its critical habitat. EPA sought written concurrence from the National Marine Fisheries Service on this determination and incorporated their comments in section III G. of the Fact Sheet.

V. Other Legal Requirements

A. Executive Order 12866

EPA has determined that this general permit is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements of this permit were previously approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. 44 U.S.C.3501 *et seq.*, and assigned OMB control number 2040–0086 (NPDES permit application) and 2040–0004 (Discharge Monitoring Reports).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. The permit issued today, however, is not a ''rule'' subject to the requirements of 5 U.S.C. 553(b) and is therefore not subject to the Regulatory Flexibility Act.

D. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' (defined to be the same as ''rules'' subject to the RFA) on tribal, state and local governments and the private sector. The permit issued today, however, is not a ''rule'' subject to the RFA and is therefore not subject to the requirements of UMRA.

Dated: June 20, 2000.

Mindy Lubber,

Regional Administrator, Region 1.

Part I—Draft General Permits Under the National Pollutant Discharge Elimination System (NPDES)

Note: The following three draft general permits have been combined for purposes of this **Federal Register**. Part I A, part I B and part I C contain general permits for the states of ME, MA, (including both Commonwealth and Indian Country Lands) and NH respectively. Part I.D. is common to all three permits.

A. Maine General Permit, Permit No. MEG640000

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*; the ''CWA''), operators of facilities discharging effluent from water treatment facilities located in Maine are authorized to discharge to all waters of the State unless otherwise restricted by Title 38, Article 4–A, Water Classification Program, in accordance with effluent limitations, monitoring requirements and other conditions set forth herein. No discharge into lakes is authorized by this permit. The permit allows water treatment facility discharges to be commingled with other discharges as long as the water treatment facility discharges can be monitored separately for compliance. In Maine the General NPDES Permit is not available to the dischargers in Indian Country. EPA will in the near future be making a decision regarding whether State law applies in Indian Country in Maine for the purposes of water quality regulation in response to the State's application to implement the NPDES Permit program in Indian Country. Until then we will not know from whom to accept section 401 of the Clean Water Act certification and so are not making the permit available in Indian Country.

This permit shall become effective when issued.

This permit and the authorization to discharge expire at midnight, five years from the effective date of the **Federal Register** publication and supersedes the permit issued on December 9, 1994.

Signed this day of ——

Linda M. Murphy,

Director, Office of Ecosystem Protection, Environmental Protection Agency, Boston, MA 02114.

Effluent Limitations and Monitoring Requirements

1. During the period beginning on the effective date and lasting through expiration, the permittee is authorized to discharge effluent from its water treatment facility. a. Each outfall discharging effluent from its water treatment facility shall be limited and monitored as specified below. Monitoring for each outfall shall be reported.

Effluent characteristic	Discharge limitations other units (Specify)		Monitoring requirements	
	Avg. monthly	Max. daily	Measurement [1] frequency	Sample type
Flow (mgd)	Report	0.15	1/week	Total Daily.
TSS (mg/l)	30	50	1/week	Grab.
pH (s.u.)	See note A.1.d		1/week	Grab.
Total Residual Chlorine (mg/l) [2]		1.0	1/week	Grab.
Aluminum, Tot. Rec. (mg/l)		5.0	1/month	Grab.
LC50 and C–NOEC (%) [3]	See note A.1.g			24-Hr. comp.

[1] Samples shall be taken only when discharging.
[2] Test and report only if chlorination is used in the process.
[3] LC–50 is the concentration of effluent in a sample that causes mortality to 50% of the test population at a specific time of observation. C–NOEC , No Observed Chronic Effect Concentration, is the highest concentration of effluent to which organisms are exposed in a life-cycle or partial life-cycle test which cause no adverse effect on growth, survival and reproduction.

b. The discharge shall not cause a violation of the water quality standards.

c. Effluent from water treatment facility may be discharged only into Class B, C, SB, and SC waters that have a drainage area larger than ten (10) square miles in accordance with Maine State Law.

d. The pH of the effluent shall not be less than 6.0 standard units nor greater than 8.5 standard units any time unless these values are exceeded due to natural causes or as a result of an approved treatment process. pH shall be monitored monthly with 4 grabs, reporting maximum and minimum values.

e. There shall be no discharge of floating solids or visible foam in other than trace amounts.

f. Samples taken in compliance with the monitoring requirements specified above shall be taken at a location that provides a representative analysis of the effluent just prior to discharge to the receiving water or if the effluent is commingled with another permitted discharge, prior to such commingling.

g. Chronic (and modified acute) toxicity test(s) shall be performed on the water treatment facility discharge by the permittee upon request by EPA and/or MEDEP. Testing shall be performed in accordance with EPA toxicity protocol to be provided at the time of request. The test shall be performed on a 24-hour composite sample to be taken during normal facility operation. The results of the test (C–NOEC and LC–50) shall be forwarded to State and EPA within 30 days after completion.

h. A minimum dilution of effluent of 100:1 in the receiving water at 7Q10 should be stipulated.

B. Massachusetts General Permit, Permit No. MAG640000

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*; the ''CWA''), and the Massachusetts Clean Waters Act, as amended, (M.G.L. Chap. 21, sections 26–53), operators of facilities located in Massachusetts, which discharge effluent from water treatment facilities to the classes of waters as designated in the Massachusetts Water Quality Standards, 314 CMR 4.00 *et seq.*, are authorized to discharge to all waters, unless otherwise restricted, in accordance with effluent limitations, monitoring requirements and other conditions set forth herein.

The permit allows effluent from water facility discharges to be commingled with other discharges as long as the effluent from the water treatment facility can be monitored separately for compliance. This permit shall become effective when issued.

This permit and the authorization to discharge expire at midnight, five years from the effective date of the **Federal Register** publication and supersedes the permit issued on December 9, 1994.

Signed this day of

Linda M. Murphy,

Director, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Boston, MA 02114.

Glenn Haas,

Director, Division of Watershed Management, Department of Environmental Protection, Commonwealth of Massachusetts, Boston, MA.

Effluent Limitations and Monitoring Requirements

1. During the period beginning on the effective date and lasting through expiration, the permittee is authorized to discharge effluent from its water treatment facility.

a. Each outfall discharging effluent from its water treatment facility shall be limited and monitored as specified below. Monitoring for each outfall shall be reported.

Effluent characteristic requirements	Discharges limitations other units (specify)		Monitoring measurement [1] frequency	Sample type
	Avg. monthly	Max. daily		
Flow, (mgd)		1.0	1/week	Total daily.
TSS, (mg/l)	30	50	1/week	4 grabs.
pH, (s.u.)	(see part I.B.1.e or f)		1/week	4 grabs.
Total Residual Chlorine, (mg/l)[2]	Report	Report	1/week	4 grabs.
Aluminum, Tot. Rec. (mg/l)		Report	1/month	4 grabs.
LC–50 and C–NOEC, (%)[3]	(see part I.B.1.g)			24-hr. comp.

[1] Samples shall be taken only when discharging.
[2] Test and report only if chlorination is used in the process.
[3] LC–50 is the concentration of effluent in a sample that causes mortality to 50% of the test population at a specific time of observation. C–NOEC , No Observed Chronic Effect Concentration, is the highest concentration of effluent to which organisms are exposed in a life-cycle or partial life-cycle test which cause no adverse effect on growth, survival and reproduction.

b. The discharge shall not cause a violation of the water quality standards.

c. There shall be no discharge of floating solids or visible foam in other than trace amounts.

d. Samples taken in compliance with the monitoring requirements specified above shall be taken at a location that provides a representative analysis of the effluent just prior to discharge to the receiving water or if the effluent is commingled with another discharge, prior to such commingling.

e. The pH of the effluent for discharges to Class A and Class B waters shall be in the range of 6.5–8.3 standard units and not more than 0.5 units outside of the background range. There shall be no change from background conditions that would impair any uses assigned to the receiving water Class.

f. The pH of the effluent for discharges to Class SA and Class SB waters shall be in the range of 6.5–8.5 standard units and not more than 0.2 units outside of the normally occurring range. There shall be no change from background conditions that would impair any uses assigned to the receiving water Class.

g. Chronic (and modified acute) toxicity test(s) shall be performed on the water treatment facility discharge by the permittee upon request by EPA and/or MADEP. Testing shall be performed in accordance with EPA toxicity protocol to be provided at the time of the request. The test shall be performed on a 24-hour composite sample to be taken during normal facility operation. The results of the test (C–NOEC and LC_{50}) shall be forwarded to State and EPA within 30 days after completion.

2. State Permit Conditions

1. This Discharge Permit is issued jointly by the U.S. Environmental Protection Agency (EPA) and the Department of Environmental Protection under Federal and State law, respectively. As such, all the terms and conditions of this permit are hereby incorporated into and constitute a discharge permit issued by the Director of the Massachusetts Division of Watershed Management pursuant to M.G.L. Chap. 21, section 43.

2. Each Agency shall have the independent right to enforce the terms and conditions of this Permit. Any modification, suspension or revocation of this Permit shall be effective only with respect to the Agency taking such action, and shall not affect the validity or status of this Permit as issued by the other Agency, unless and until each

Agency has concurred in writing with such modification, suspension or revocation. In the event any portion of this Permit is declared, invalid, illegal or otherwise issued in violation of State law such permit shall remain in full force and effect under Federal law as an NPDES Permit issued by the U.S. Environmental Protection Agency. In the event this Permit is declared invalid, illegal or otherwise issued in violation of Federal law, this Permit shall remain in full force and effect under State law as a Permit issued by the Commonwealth of Massachusetts.

C. New Hampshire General Permit, Permit No. NHG640000

In compliance with the provisions of the Federal Clean Water Act, as amended, (33 U.S.C. 1251 *et seq.*; the ''CWA''), operators of facilities discharging effluent from water treatment facility located in New Hampshire are authorized to discharge to all waters, unless otherwise restricted by State Water Quality Standards, New Hampshire RSA 485–A:8, in accordance with effluent limitations, monitoring requirements and other conditions set forth herein. The permit allows effluent from water treatment facility to be commingled with other discharges as long as the effluent from water treatment facility can be monitored separately for compliance.

This permit shall become effective when issued.

This permit and the authorization to discharge expire at midnight, five years from the effective date of the **Federal Register** publication and supersedes the permit issued on December 9, 1994.

Signed this day of

Linda M. Murphy,

Director, Office of Ecosystem Protection, Environmental Protection Agency, Boston, MA 02114.

Effluent Limitations and Monitoring Requirements

1. During the period beginning on the effective date and lasting through expiration, the permittee is authorized to discharge effluent from its water treatment facility.

a. Each outfall discharging effluent from water treatment facilities shall be limited and monitored as specified below. Monitoring for each outfall shall be reported.

Effluent characteristic	Discharges limitations other units (specify)		Monitoring requirements	
	Avg. monthly	Max. daily	Measurement[1] frequency	Sample type
Flow, (mgd)		1.0	1/week	Total daily.
TSS, (mg/l)	30	50	1/week	Grab.
pH, (s.u.) (see Part I.C.1.e)	For limits see part I.C.2.a.		1/week	Grab.
Total Residual Chlorine, (mg/l)[2]	Report	Report	1/week	Grab.
Aluminum, Tot. Rec., (mg/l)		Report	1/month	Grab.
LC-50 and C-NOEC, (%)[3]	(see part I.C.1.f)			24-hour composite.

[1] Samples shall be taken only when discharging.
[2] Test and report only if chlorination is used in the process.
[3] LC–50 is the concentration of effluent in a sample that causes mortality to 50% of the test population at a specific time of observation. C–NOEC, No Observed Chronic Effect Concentration, is the highest concentration of effluent to which organisms are exposed in a life-cycle or partial life-cycle test which cause no adverse effect on growth, survival and reproduction at a specific time of observation as determined from hypothesis testing where the test results (growth, survival and/or reproduction) exhibit a linear dose-response relationship. However, where the test results do not exhibit a linear dose-response relationship, report the lowest concentration where there is no observable effect.

b. The discharge shall not cause a violation of the water quality standards of the receiving water.

c. The discharge shall be adequately treated to insure that the surface water remains free from pollutants in concentrations or combinations that settle to form harmful deposits, float as foam, debris, scum or other visible pollutants. It shall be adequately treated to insure that the surface waters remain free from pollutants which odor, color, taste or turbidity in the receiving water which is not naturally occurring and would render it unsuitable for its designated uses.

d. Samples taken in compliance with the monitoring requirements specified above shall be taken at a location that provides a representative analysis of the effluent just prior to discharge to the receiving water or, if the effluent is commingled with another permitted discharge, prior to such commingling.

e. The permittee may submit a written request to the EPA requesting a change in the permitted pH limit range to be not less restrictive than any applicable federal effluent guideline for the facility or to a default range of 6.0 to 9.0 S.U. in the situation of no applicable guideline, whichever is more stringent. The permittee's written request must include the State's letter containing an original signature (no copies). The State's letter shall state that the permittee has demonstrated to the State's satisfaction that as long as discharges to the receiving water from a specific outfall are within a specific numeric pH range the naturally occurring receiving water pH will be unaltered. That letter must specify for each outfall the associated numeric pH limit range. Until written notice is received by certified mail from the EPA indicating the pH limit range has been changed, the permittee is required to meet the permitted pH limit range in the respective permit.

f. One chronic (and modified acute) toxicity test shall be performed on the water treatment facility's discharge by the permittee upon request by EPA and/or the NHDES. Testing shall be performed in accordance with EPA toxicity protocol to be provided at the time of the request. The test shall be performed on a 24-hour composite sample to be taken during normal facility operation. The results of the test (C-NOEC and LC_{50}) shall be forwarded to the State and EPA within 30 days after completion.

2. State Permit Conditions

a. The permittee shall comply with the following conditions which are included as State Certification requirements.

The pH range for class B waters shall be 6.5–8.0 S.U. or as naturally occurs in the receiving water. The 6.5–8.0 S.U. range must be achieved in the final effluent unless the permittee can demonstrate to Division that: (1) The range should be widened due to naturally occurring conditions in the receiving water or (2) the naturally occurring source water pH is unaltered by the permittees operation. The scope

of any demonstration project must receive prior approval from the Division.

b. This NPDES Discharge Permit is issued by the U.S. Environmental Protection Agency under Federal and State law. Upon final issuance by the EPA, the New Hampshire Department of Environmental Services, Water Division, may adopt this Permit, including all terms and conditions, as a state permit pursuant to RSA 485–A:13.

D. Common Elements for All Permits

1. Conditions of the General NPDES Permit

a. Geographic Areas

Maine (Permit No. MEG640000). All of the discharges to be authorized by the general NPDES permit for dischargers located in the State of Maine are into all waters of the State unless otherwise restricted by Title 38, Article 4–A, Water Classification Program (or as revised). In Maine the General NPDES Permit is not available to the dischargers in Indian Country. EPA will in the near future be making a decision regarding whether State law applies in Indian Country in Maine for the purposes of water quality regulation in response to the State's application to implement the NPDES Permit program in Indian Country. Until then we will not know from whom to accept section 401 of the Clean Water Act certification and so are not making the permit available in Indian Country.

Massachusetts (Permit No. MAG640000). All of the discharges to be authorized by the general NPDES permit for dischargers in the Commonwealth of Massachusetts are into all waters of the Commonwealth unless otherwise restricted by the Massachusetts Surface Water Quality Standards, 314 CMR 4.00 (or as revised), including 314 CMR 4.04(3) *Protection of Outstanding Resource Waters.*

New Hampshire (Permit No. NHG640000). All of the discharges to be authorized by the general NPDES permit for dischargers in the State of New Hampshire are into all waters of the State of New Hampshire unless otherwise restricted by the State Water Quality Standards, New Hampshire RSA 485–A:8 (or as revised).

b. Notification by Permittees

Operators of facilities whose discharge, or discharges, are effluent from water treatment facilities and whose facilities are located in the geographic areas described in part I.D.1.a above, may submit to the Regional Administrator, EPA—New England, a notice of intent to be covered by the appropriate general permit. Notifications must be submitted by permittees who are seeking coverage under this permit for the first time and by those permittees who received coverage under the expired permit. This written notification must include for each individual facility, the owner's and/or operator's legal name, address and telephone number; the facility name, address, contact name and telephone number; the number and type of facilities (SIC code) to be covered; the facility location(s); a topographic map (or other map if a topographic map is not available) indicating the facility location(s) and discharge point(s); latitude and longitude of outfall(s); the name(s) of the receiving waters into which discharge will occur; the source of water *i.e.,* river intake, private well etc. to be treated; an antidegradation review where necessary see section IV. C of the Fact Sheet; new and increased discharges from water treatment facility that may adversely affect a listed or proposed to be listed endangered or threatened species or its critical habitat are not authorized under this general permit (see section IV. E of the Fact Sheet); and a list of water treatment chemicals used by the facility. The notice must be signed in accordance with the signatory requirements of 40 CFR 122.22.

Each facility must certify that the discharge for which it is seeking coverage under this general permit consists solely of effluent from discharges from the water treatment facilities. If the discharge of the water treatment facility subsequently mixes with other wastewater (e.g. stormwater) prior to discharging to a receiving water, the permittee must certify that the monitoring it will provide under this general permit will be only for water treatment facility. An authorization to discharge under this general permit, where the water treatment facility discharges to a municipal or private storm drain owned by another party, does not convey any rights or authorization to connect to that drain.

Each facility must also submit a copy of the notice of intent to each State authority as appropriate (see individual state permits for appropriate authority and address).

The facilities authorized to discharge under the final general permit will receive written notification from EPA, New England Region, with State concurrence. Failure to submit to EPA, New England Region, a notice of intent to be covered and/or failure to receive from EPA written notification of permit coverage means that the facility is not authorized to discharge under this general permit.

2. Administrative Aspects

a. Request To be Covered

A facility is not covered by any of these general permits until it meets the following requirements. First, it must send a notice of intent to EPA and the appropriate State indicating it meets the requirements of the permit and wants to be covered. And second, it must be notified in writing by EPA that it is covered by this general permit.

b. Eligibility to Apply

Any facility operating under an effective (unexpired) individual NPDES permit may request that the individual permit be revoked and that coverage under the general permit be granted, as outlined in 40 CFR 122.28(b)(3)(v). If EPA revokes the individual permit, the general permit would apply to the discharge.

Facilities with expired individual permits that have been administratively continued in accordance with 40 CFR 122.6 may apply for coverage under this general permit. When coverage is granted the expired individual permit automatically will cease being in effect. Proposed new dischargers may apply for coverage under this general permit and must submit the NOI 90 days prior to the discharge.

Facilities with coverage under the current general permit issued on December 9, 1994, effective on January 9, 1995 and expired on January 9, 2000 need to apply for coverage under this general permit within 60 days from the effective date of the permit. Failure to submit a Notice of Intent within 60 days for continuation of the discharge will be considered discharging without a permit as of the expiration date of the expired permit (January 9, 2000) for enforcement purposes. A Notice of Intent is not required if the permittee submits a Notice of Termination (see part I.F.1) of discharge before the sixty days expires.

c. Continuation of this General Permit after Expiration

If this permit is not reissued prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedures Act and remain in force and in effect as to any particular permittee as long as the permittee submits a new Notice of Intent two (2) months prior to the expiration date in the permit. However, once this permit expires EPA cannot provide written notification of coverage under this general permit to any permittee who submits Notice of

Intent to EPA after the permit's expiration date. Any permittee who was granted permit coverage prior to the expiration date will automatically remain covered by the continued permit until the earlier of:

(1) Reissuance of this permit, at which time the permittee must comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or

(2) The permittee's submittal of a Notice of Termination; or

(3) Issuance of an individual permit for the permittee's discharges; or

(4) A formal permit decision by the Director not to reissue this general permit, at which time the permittee must seek coverage under an alternative general permit or an individual permit.

E. Monitoring and Reporting

Maine and Massachusetts

Monitoring results obtained during the previous 3 months shall be summarized for each quarter and reported on separate Discharge Monitoring Report Form(s) postmarked no later than the 15th day of the month following the completed reporting period. The reports are due on the 15th day of January, April, July and October. The first report may include less than 3 months information.

New Hampshire

Monitoring results obtained during the previous month shall be summarized for each month and reported on separate Discharge Monitoring Report Form(s) postmarked no later than the 15th day of the month following the completed reporting period. The reports are due on the 15th day of the month following the reporting period.

The reports as stated above should be sent to EPA and the States at the following addresses:

1. EPA

Submit original signed and dated DMRs and all other reports required herein at the following addressee: U.S. Environmental Protection Agency, Water Technical Unit (SEW), Post Office Box 8127, Boston, MA 02114.

2. Massachusetts Department of Environmental Protection

a. The Regional Offices wherein the discharge occurs, shall receive a copy of the DMRs required herein:

Massachusetts Department of Environmental Protection, Western Regional Office, Post Office Box 2410, Springfield, MA 01103

Massachusetts Department of Environmental Protection, Southeastern Regional Office, 20 Riverside Drive, Lakeville, MA 02347

Massachusetts Department of Environmental Protection, Northeastern Regional Office, 205A Lowell Street, Wilmington, MA 01887

Massachusetts Department of Environmental Protection, Central Regional Office, 627 Main Street, Worcester, Massachusetts 01608

b. Copies of all toxicity tests and other notifications, except DMRs required by this permit shall also be submitted to the State at:

Massachusetts Department of Environmental Protection, Division of Watershed Management, 627 Main Street, Worcester, MA 01608

c. Copies of the State Application Form BRP WM 11, Appendix A-Request for General Permit coverage, may be obtained at the DEP website at (*www.state.magnet.us/dep*); by telephoning the DEP Info Service Center (Permitting) at (617) 338–2255 or 1–800–462–0444 in 508, 413, 978 and 781 area codes; or from any DEP Regional Service Center located in each Regional Office.

3. Maine Department of Environmental Protection

Signed copies of all reports required by this permit shall be sent to the State at: Maine Department of Environmental Protection, Division of Water Resource Regulation, 17 State House, Augusta, ME 04333.

4. New Hampshire Department of Environmental Services

Signed copies of all reports required by this permit shall be sent to the State at: New Hampshire Department of Environmental Services, Water Division, P.O. Box 95, 6 Hazen Drive, Concord, New Hampshire 03302–0095.

F. Additional General Permit Conditions

1. Termination of Operations

Operators of facilities and/or operations authorized under this permit shall notify the Director upon the termination of discharges. The notice must contain the name, mailing address, and location of the facility for which the notification is submitted, the NPDES permit number for the water treatment facility discharge identified by the notice, and an indication of whether the water treatment facility discharge has been eliminated or the operator of the discharge has changed. The notice must be signed in accordance with the signatory requirements of 40 CFR 122.22.

2. When the Director May Require Application for an Individual NPDES Permit

a. The Director may require any person authorized by this permit to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take such action. Instances where an individual permit may be required include the following:

(1) The discharge(s) is a significant contributor of pollution;

(2) The discharger is not in compliance with the conditions of this permit;

(3) A change has occurred in the availability of the demonstrated technology of practices for the control or abatement of pollutants applicable to the point source;

(4) Effluent limitation guidelines are promulgated for point sources covered by this permit;

(5) A Water Quality Management Plan or Total Maximum Daily Load containing requirements applicable to such point source is approved;

(6) Discharge to the territorial sea

(7) Discharge to outstanding natural resource water.

(8) The point source(s) covered by this permit no longer:

(a) Involves the same or substantially similar types of operations;

(b) Discharges the same types of wastes;

(c) Requires the same effluent limitations or operating conditions;

(d) Requires the same or similar monitoring; and

(e) In the opinion of the Director, is more appropriately controlled under a general permit than under an individual NPDES permit.

b. The Director may require an individual permit only if the permittee authorized by the general permit has been notified in writing that an individual permit is required, and has been given a brief explanation of the reasons for this decision.

3.When an Individual NPDES Permit May Be Requested

a. Any operator may request to be excluded from the coverage of this general permit by applying for an individual permit.

b. When an individual NPDES permit is issued to an operator otherwise subject to this general permit, the applicability of this permit to that owner or operator is automatically terminated on the effective date of the individual permit.

Part II. Standard Conditions

Section A. General Requirements

1. Duty To Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

a. The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under section 405 (d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

b. The CWA provides that any person who violates sections 301, 302, 306, 307, 308, 318, or 405 of the CWA or any permit condition or limitation implementing any of such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the CWA is subject to a civil penalty not to exceed $25,000 per day for each violation. Any person who *negligently* violates such requirements is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than l year, or both. Any person who *knowingly* violates such requirements is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both. **Note:** See 40 CFR 122.41(a)(2) for additional enforcement criteria.

c. Any person may be assessed an administrative penalty by the Administrator for violating sections 301, 302, 306, 307, 308, 318, or 405 of the CWA, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the CWA. Administrative penalties for Class I violations are not to exceed $10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed $25,000. Penalties for Class II violations are not to exceed $10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed $125,000.

2. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

3. Duty To Provide Information

The permittee shall furnish to the Regional Administrator, within a reasonable time, any information which the Regional Administrator may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Regional Administrator, upon request, copies of records required to be kept by this permit.

4. Reopener Clause

The Regional Administrator reserves the right to make appropriate revisions to this permit in order to establish any appropriate effluent limitations, schedules of compliance, or other provisions which may be authorized under the CWA in order to bring all discharges into compliance with the CWA.

5. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the CWA, or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

6. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges.

7. Confidentiality of Information

a. In accordance with 40 CFR part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words ''confidential business information'' on each page containing such information. If no claim is made at the time of submission, *EPA may make the information available to the public without further notice.* If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR part 2 (Public Information).

b. Claims of confidentiality for the following information *will* be denied:

(i) The name and address of any permit applicant or permittee;

(ii) Permit applications, permits, and effluent data as defined in 40 CFR 2.302(a)(2).

c. Information required by NPDES application forms provided by the Regional Administrator under section 122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

8. Duty To Reapply

If the permittee wishes to continue an activity regulated by this permit after its expiration date, the permittee must apply for and obtain a new permit. The permittee shall submit a new notice of intent at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Regional Administrator. (The Regional Administrator shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

9. State Authorities

Nothing in parts 122, 123, or 124 precludes more stringent State regulation of any activity covered by these regulations, whether or not under an approved State program.

10. Other Laws

The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, nor does it relieve the permittee of its obligation to comply with any other applicable Federal, State, and local laws and regulations.

Section B. Operation and Maintenance of Pollution Controls

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of the permit.

2. Need To Halt or Reduce Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

3. Duty To Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

4. Bypass

a. Definitions.

(1) ''Bypass'' means the intentional diversion of waste streams from any portion of a treatment facility.

(2) ''Severe property damage'' means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

b. *Bypass not exceeding limitations.* The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs B.4.c and 4.d of this section.

c. *Notice.*

(1) *Anticipated bypass.*

If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(2) *Unanticipated bypass.*

The permittee shall submit notice of an unanticipated bypass as required in paragraph D.1.e (24-hour notice).

d. *Prohibition of bypass.*

(1) Bypass is prohibited, and the Regional Administrator may take enforcement action against a permittee for bypass, unless:

(a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(c)(i) The permittee submitted notices as required under paragraph 4.c of this section.

(ii) The Regional Administrator may approve an anticipated bypass, after considering its adverse effects, if the Regional Administrator determines that it will meet the three conditions listed above in paragraph 4.d of this section.

5. Upset

a. *Definition.* ''Upset'' means an exceptional incident in which there is unintentional and temporary non-compliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

b. *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of paragraph B.5.c of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

c. *Conditions necessary for a demonstration of upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) An upset occurred and that the permittee can identify the cause(s) of the upset;

(2) The permitted facility was at the time being properly operated;

(3) The permittee submitted notice of the upset as required in Paragraphs D.1.a and 1.e (24-hour notice); and

(4) The permittee complied with any remedial measures required under B.3. above.

d. *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

Section C. Monitoring and Records

1. Monitoring and Records

a. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR part 503), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application *except for the information concerning storm water discharges which must be retained for a total of 6 years.* This retention period may be extended by request of the Regional Administrator at any time.

c. Records of monitoring information shall include:

(1) The date, exact place, and time of sampling or measurements;

(2) The individual(s) who performed the sampling or measurements;

(3) The date(s) analyses were performed;

(4) The individual(s) who performed the analyses;

(5) The analytical techniques or methods used; and

(6) The results of such analyses.

d. Monitoring results must be conducted according to test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, unless other test procedures have been specified in the permit.

e. The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

2. Inspection and Entry

The permittee shall allow the Regional Administrator, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

d. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

Section D. Reporting Requirements

1. Reporting Requirements

a. *Planned changes.* The permittee shall give notice to the Regional Administrator as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b); or

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject to the effluent limitations in the permit, nor to the notification requirements under 40 CFR 122.42(a)(1).

(3) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition or change may justify the application of permit conditions different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

b. *Anticipated noncompliance.* The permittee shall give advance notice to the Regional Administrator of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

c. *Transfers.* This permit is not transferable to any person except after notice to the Regional Administrator. The Regional Administrator may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act. (See section 122.61; in some cases, modification or revocation and reissuance is mandatory.)

d. *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(1) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Regional Administrator for reporting results of monitoring of sludge use or disposal practices.

(2) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Regional Administrator.

(3) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Regional Administrator in the permit.

e. *Twenty-four hour reporting.*

(1) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances.

A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(2) The following shall be included as information which must be reported within 24 hours under this paragraph.

(a) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See section 122.41(g))

(b) Any upset which exceeds any effluent limitation in the permit.

(c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Regional Administrator in the permit to be reported within 24 hours. (See section 122.44(g))

(3) The Regional Administrator may waive the written report on a case-by-case basis for reports under paragraph D.1.e if the oral report has been received within 24 hours.

f. *Compliance Schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

g. *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under paragraphs D.1.d, D.1.e and D.1.f of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph D.1.e of this section.

h. *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Regional Administrator, it shall promptly submit such facts or information.

2. Signatory Requirement

a. All applications, reports, or information submitted to the Regional Administrator shall be signed and certified. (See section 122.22)

b. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

3. Availability of Reports

Except for data determined to be confidential under paragraph A.8. above, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the State water pollution control agency and the Regional Administrator. As required by the CWA, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in section 309 of the CWA.

Section E. Other Conditions

1. *Definitions* for purposes of this permit are as follows:

Administrator means the Administrator of the United States

Environmental Protection Agency, or an authorized representative. ≤

Applicable standards and limitations means all State, interstate, and Federal standards and limitations to which a ''discharge'' or a related activity is subject to, including water quality standards, standards of performance, toxic effluent standards or prohibitions, ''best management practices,'' and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

Application means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in ''approved States,'' including any approved modifications or revisions.

Average means the arithmetic mean of values taken at the frequency required for each parameter over the specified period. For total and/or fecal coliforms, the average shall be the geometric mean.

Average monthly discharge limitation means the highest allowable average of ''daily discharges'' over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

Average weekly discharge limitation means the highest allowable average of ''daily discharges'' over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of ''waters of the United States.'' BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Best Professional Judgement (BPJ) means a case-by-case determination of Best Practicable Treatment (BPT), Best Available Treatment (BAT) or other appropriate standard based on an evaluation of the available technology to achieve a particular pollutant reduction.

Composite Sample—A sample consisting of a minimum of eight grab samples collected at equal intervals during a 24-hour period (or lesser period as specified in the section on Monitoring and Reporting) and combined proportional to flow, or a sample continuously collected proportionally to flow over that same time period.

Continuous Discharge means a ''discharge'' which occurs without interruption throughout the operating hours of the facility except for infrequent shutdowns for maintenance, process changes, or similar activities.

CWA or ''The Act'' means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92–500, as amended by Public Law 95–217, Public Law 95–576, Public Law 96–483 and Public Law 97–117; 33 U.S.C. 1251 *et seq.*

Daily Discharge means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurements, the daily discharge is calculated as the average measurement of the pollutant over the day.

Director means the person authorized to sign NPDES permits by EPA and/or the State.

Discharge Monitoring Report Form (DMR) means the EPA standard national form, including any subsequent additions, revisions, or modifications, for the reporting of self-monitoring results by permittees. DMRs must be used by ''approved States'' as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's.

Discharge of a pollutant means:

(a) Any addition of any ''pollutant'' or combination of pollutants to ''waters of the United States'' from any ''point source,'' or

(b) Any addition of any pollutant or combination of pollutants to the waters of the ''contiguous zone'' or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances leading into privately owned treatment works.

This term does not include an addition of pollutants by any ''indirect discharger.''

Effluent limitation means any restriction imposed by the Director on quantities, discharge rates, and concentrations of ''pollutants'' which are ''discharged'' from ''point sources'' into ''waters of the United States,'' the waters of the ''contiguous zone,'' or the ocean.

Effluent limitations guidelines means a regulation published by the Administrator under Section 304(b) of CWA to adopt or revise ''effluent limitations.''

EPA means the United States ''Environmental Protection Agency.''

Grab Sample—An individual sample collected in a period of less than 15 minutes.

Hazardous Substance means any substance designated under 40 CFR part 116 pursuant to section 311 of CWA.

Maximum daily discharge limitation means the highest allowable ''daily discharge.''

Municipality means a city, town, borough, county, parish, district, association, or other public body created by of under State law and having jurisdiction over disposal or sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribe organization, or a designated and approved management agency under section 208 of CWA.

National Pollutant Discharge Elimination System means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA. The term includes an ''approved program.''

New discharger means any building, structure, facility, or installation:

(a) From which there is or may be a ''discharge of pollutants'';

(b) That did not commence the ''discharge of pollutants'' at a particular ''site'' prior to August 13, 1979;

(c) Which is not a ''new source''; and

(d) Which has never received a finally effective NPDES permit for discharges at that ''site''.

This definition includes an ''indirect discharger'' which commences discharging into ''waters of the United States'' after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a ''site'' for which it does not have a

permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a ''site'' under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Regional Administrator in the issuance of a final permit to be an area of biological concern. In determining whether an area is an area of biological concern, the Regional Administrator shall consider the factors specified in 40 CFR 125.122.(a)(1) through (10).

An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a ''new discharger'' only for the duration of its discharge in an area of biological concern.

New source means any building, structure, facility, or installation from which there is or may be a ''discharge of pollutants,'' the construction of which commenced:

(a) After promulgation of standards of performance under section 306 of CWA which are applicable to such.

(b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

NPDES means ''National Pollutant Discharge Elimination System.''

Non-Contact Cooling Water is water used to reduce temperature which does not come in direct contact with any raw material, intermediate product, a waste product or finished product.

Owner or operator means the owner or operator of any ''facility or activity'' subject to regulation under the NPDES programs.

Permit means an authorization, license, or equivalent control document issued by EPA or an ''approved State.''

Person means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

Point source means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

Pollutant means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

Primary industry category means any industry category listed in the NRDC settlement agreement (*Natural Resources Defense Council et al.* v. *Train,* 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in appendix A of 40 CFR part 122.

Process wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Regional Administrator means the Regional Administrator, EPA, Region I, Boston, Massachusetts.

State means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands.

Secondary Industry Category means any industry category which is not a ''primary industry category.''

Toxic pollutant means any pollutant listed as toxic in appendix D of 40 CFR part 122, under section 307(a)(l) of CWA.

Uncontaminated storm water is precipitation to which no pollutants have been added and has not come into direct contact with any raw material, intermediate product, waste product or finished product.

Waters of the United States means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate ''wetlands.''

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, ''wetlands,'' sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a)–(d) of this definition;

(f) The territorial sea; and

(g) ''Wetlands'' adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)—(f) of this definition.

Whole Effluent Toxicity (WET) means the aggregate toxic effect of an effluent measured directly by a toxicity test.

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

2. Abbreviations when used in this permit are defined below:

cu. M/day or M3/day—cubic meters per day

mg/l—milligrams per liter

ug/l—micrograms per liter

lbs/day—pounds per day

kg/day—kilograms per day

Temp. °C—temperature in degrees Centigrade

Temp. °F—temperature in degrees Fahrenheit

Turb.—turbidity measured by the Nephelometric Method (NTU)

pH—a measure of the hydrogen ion concentration

CFS—cubic feet per second

MGD—million gallons per day

Oil & Grease—Freon extractable material

ml/l—milliliter(s) per liter

Cl_2—total residual chlorine

[FR Doc. 00–16631 Filed 6–29–00; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 41]

Agency Information Collection Activities; Proposed Collection; Common Request

AGENCY: Export-Import Bank of the United States (Ex-Im Bank).

ACTION: Notice and request for comments.

SUMMARY: Ex-Im Bank as a 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 the proposed information collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before August 28, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for additional information to Carlista Robinson, 811 Vermont Avenue, N.W., Room 764, Washington, D.C. 20571, (202) 565-3351.

SUPPLEMENTARY INFORMATION:

Title: U.S. Small Business Administration, Export-Import Bank of the United States, Joint Application for Working Capital Guarantee.

OMB Number: 3048–0003.

Form Number: EIB–SBA 84–1 (Rev. 8/2000).

Type of Review: Revision.

Abstract: The proposed form is to be used by commercial banks and other lenders as well as U.S. Exporters in applying for guarantees on working capital loans advanced by the lenders to U.S. exporters.

Frequency of use: Upon application for guarantees on working capital loans advanced by the lenders to U.S. exporters.

Respondents: Commercial banks and other lenders, as well as U.S. exporters throughout the United States.

Estimated total number of annual responses: 600.

Estimated time per respondent: 2 hours.

Estimated total number of hours needed to fill out the form: 1200.

Request for comment: 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; 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.

Dated: June 26, 2000.

Carlista D. Robinson,

Agency Clearance Officer.

[FR Doc. 00–16590 Filed 6–29–00; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies; Report to Congressional Committees

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Report to the Committee on Banking and Financial Services of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the United States Senate regarding differences in capital and accounting standards among the Federal banking and thrift agencies.

SUMMARY: This report has been prepared by the FDIC pursuant to Section 37(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831n(c)). Section 37(c) requires each federal banking agency to report to the Committee on Banking and Financial Services of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the Senate any differences between any accounting or capital standard used by such agency and any accounting or capital standard used by any other such agency. The report must also contain an explanation of the reasons for any discrepancy in such accounting and capital standards and must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Chief, Accounting Section, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429, telephone (202) 898–8906.

SUPPLEMENTARY INFORMATION: The text of the report follows:

Report to the Committee on Banking and Financial Services of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the United States Senate Regarding Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies

A. Introduction

The Federal Deposit Insurance Corporation (FDIC) has prepared this report pursuant to Section 37(c) of the Federal Deposit Insurance Act. Section 37(c) requires the agency to submit a report to specified Congressional Committees describing any differences in regulatory capital and accounting standards among the federal banking and thrift agencies, including an explanation of the reasons for these differences. Section 37(c) also requires the FDIC to publish this report in the **Federal Register**. This report covers differences existing during 1999 and developments affecting these differences.

The FDIC, the Board of Governors of the Federal Reserve System (FRB), and the Office of the Comptroller of the Currency (OCC) (hereafter, the banking agencies) have substantially similar leverage and risk-based capital standards. While the Office of Thrift Supervision (OTS) employs a regulatory capital framework that also includes leverage and risk-based capital requirements, it differs in some respects from that of the banking agencies. Nevertheless, the agencies view the leverage and risk-based capital requirements as minimum standards and most institutions are expected to operate with capital levels well above the minimums, particularly those institutions that are expanding or experiencing unusual or high levels of risk.

The banking agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), have developed uniform Reports of Condition and Income (Call Reports) for all insured commercial banks and FDIC-supervised savings banks. The OTS requires each savings association to file the Thrift Financial Report (TFR). The reporting standards for recognition and measurement in both the Call Report and the TFR are consistent with generally accepted accounting principles (GAAP). Thus, there are no significant differences in reporting standards among the agencies. However, two minor differences remain between the standards of the banking agencies and those of the OTS.

Section 303 of the Riegle Community Development and Regulatory

Improvement Act of 1994 (12 U.S.C. 4803) requires the banking agencies and the OTS to conduct a systematic review of their regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate inconsistencies. It also directs the four agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. The results of these efforts must be ''consistent with the principles of safety and soundness, statutory law and policy, and the public interest.''

Effective April 1, 1999, the four agencies amended their capital standards to adopt a uniform minimum leverage capital requirement and uniform risk-based capital standards for the treatment of presold residential construction loans, junior liens on one-to-four family residential properties, and investments in mutual funds.[1] The four agencies' ongoing efforts to eliminate other differences among their regulatory capital standards are discussed in the following section.

B. Differences in Capital Standards Among the Federal Banking and Thrift Agencies

B.1. Capital Requirements for Recourse Arrangements

B.1.a. Senior-Subordinated Structures—Some asset securitization structures involve the creation of senior and subordinated classes of securities or other financial instruments. When a bank originates such a transaction and retains a subordinated interest, the banking agencies generally require that the bank maintain risk-based capital against its subordinated interest plus all more senior interests unless the low-level recourse rule applies.[2] However, when a bank purchases a subordinated interest in a pool of assets that it did not own, the banking agencies assign the investment in the subordinated interest to the 100 percent risk weight category.

In general, unless the low-level recourse rule applies, the OTS requires a thrift that holds the subordinated interest in a senior-subordinated structure to maintain capital against the subordinated interest plus all more senior interests regardless of whether the subordinated interest has been retained or has been purchased.

On March 8, 2000, the banking and thrift agencies published a proposal that, among other provisions, generally would treat both retained and purchased subordinated interests similarly for risk-based capital purposes, i.e., banks and thrifts would be required to hold capital against the subordinated interest plus all more senior interests unless the low-level recourse rule applies. The proposal also includes a multi-level approach for determining the capital requirements for asset securitizations. The multi-level approach would vary the risk-based capital requirements for positions in securitizations, including subordinated interests, according to their relative risk exposure. The comment period for the proposal ended on June 7, 2000. After the agencies evaluate the comments received, they will determine how to proceed with their joint proposal.

B.1.b. Recourse Servicing—The right to service loans and other financial assets may be retained when the assets are sold. This right also may be acquired from another entity. Regardless of whether servicing rights are retained or acquired, recourse is present whenever the servicer must absorb credit losses on the assets being serviced. The banking agencies and the OTS require an institution to maintain risk-based capital against the full amount of assets sold by the institution if the institution, as servicer, must absorb credit losses on those assets. Additionally, the OTS applies a capital charge to the full amount of assets being serviced by a thrift that has purchased the servicing from another party if the thrift is required to absorb credit losses on the assets being serviced.

The agencies' March 2000 risk-based capital proposal would require banks that purchase loan servicing rights which provide loss protection to the owners of the serviced loans to begin to hold capital against those loans, thereby making the risk-based capital treatment of these servicing rights uniform for banks and savings associations. As mentioned above, after evaluating the comments received on the proposal, the agencies will determine how to proceed with the proposal.

B.2. Interest Rate Risk

Section 305 of the FDIC Improvement Act of 1991 mandates that the agencies' risk-based capital standards take adequate account of interest rate risk. In August 1995, each of the banking agencies amended its capital standards to specifically include an assessment of a bank's interest rate risk, as measured by its exposure to declines in the economic value of its capital due to changes in interest rates, in the evaluation of bank capital adequacy. In June 1996, the banking agencies issued a Joint Agency Policy Statement on Interest Rate Risk that provides guidance on sound practices for managing interest rate risk. This policy statement does not establish a standardized measure of interest rate risk nor does it create an explicit capital charge for interest rate risk. Instead, the policy statement identifies the standards that the banking agencies will use to evaluate the adequacy and effectiveness of a bank's interest rate risk management.

In 1993, the OTS adopted a final rule that adds an interest rate risk component to its risk-based capital standards. Under this rule, savings associations with a greater than normal interest rate exposure must take a deduction from the total capital available to meet their risk-based capital requirement. The deduction is equal to one half of the difference between the institution's actual measured exposure and the normal level of exposure. The OTS has partially implemented this rule by formalizing the review of interest rate risk; however, no deductions from capital are being made. Thus, the regulatory capital approach to interest rate risk adopted by the OTS differs from that of the banking agencies.

B.3. Subsidiaries

The banking agencies generally consolidate all significant majority-owned subsidiaries of the parent bank for regulatory capital purposes. The purpose of this practice is to assure that capital requirements are related to all of the risks to which the bank is exposed. For subsidiaries that are not consolidated on a line-for-line basis, their balance sheets may be consolidated on a pro-rata basis, bank investments in such subsidiaries may be deducted entirely from capital, or the investments may be risk-weighted at 100 percent, depending upon the circumstances. These options for handling subsidiaries for purposes of determining the capital adequacy of the parent bank provide the banking agencies with the flexibility necessary to ensure that institutions maintain capital levels that are commensurate with the actual risks involved.

Under the OTS' capital guidelines, a statutorily mandated distinction is drawn between subsidiaries engaged in activities that are permissible for

[1] For further information on these previous differences in capital standards, please refer to the FDIC's Report Regarding Capital and Accounting Differences Among the Federal Banking and Thrift Agencies for 1998 (64 FR 26962).

[2] When assets are sold with limited recourse, the banking and thrift agencies' risk-based capital standards limit the amount of capital that must be maintained against this exposure to the less of the amount of the recourse retained (*e.g.*, through the retention of a subordinated interest) or the amount of risk-based capital that would otherwise be required to be held against the assets that were sold, *i.e.*, the full effective risk-based capital charge. This is known as the ''low-level recourse'' rule.

national banks and subsidiaries engaged in ''impermissible'' activities for national banks. For regulatory capital purposes, subsidiaries of savings associations that engage only in permissible activities are consolidated on a line-for-line basis, if majority-owned, and on a pro rata basis, if ownership is between 5 percent and 50 percent. For subsidiaries that engage in impermissible activities, investments in, and loans to, such subsidiaries are deducted from assets and capital when determining the capital adequacy of the parent.

B.4. Servicing Assets and Intangible Assets

The four agencies' capital rules permit servicing assets and purchased credit card relationships to count toward capital requirements, subject to certain limits. The aggregate regulatory capital limit on these two categories of assets is 100 percent of Tier 1 capital. However, within this overall limit, nonmortgage servicing assets are combined with purchased credit card relationships and this combined amount is limited to no more than 25 percent of an institution's Tier 1 capital. Before applying these Tier 1 capital limits, mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships are each first limited to the lesser of 90 percent of their fair value or 100 percent of their book value (net of any valuation allowances). Any servicing assets and purchased credit card relationships that exceed the relevant limits, as well as all other intangible assets such as goodwill and core deposit intangibles, are deducted from capital and assets in calculating an institution's Tier 1 capital.

Although the four agencies' regulatory capital treatment of servicing assets and intangible assets is fundamentally the same, the OTS' capital rules contain two differences from the banking agencies' rules in this area. However, with the passage of time, these two differences have become relatively insignificant. Under its rules, the OTS has grandfathered, *i.e.*, does not deduct from regulatory capital, (a) core deposit intangibles acquired before February 1994 up to 25 percent of Tier 1 capital and (b) all purchased mortgage servicing rights acquired before February 1990.

B.5. Collateralized Transactions

The FRB and the OCC assign a zero percent risk weight to claims collateralized by cash on deposit in the institution or by securities issued or guaranteed by the U.S. Government or the central governments of countries that are members of the Organization of Economic Cooperation and Development (OECD), provided a positive margin of collateral protection is maintained daily.

The FDIC and the OTS assign a 20 percent risk weight to claims collateralized by cash on deposit in the institution or by securities issued or guaranteed by the U.S. Government or OECD central governments.

As part of the Section 303 review of their capital standards, the banking and thrift agencies issued a joint proposal in August 1996 that would permit collateralized claims that meet criteria that are uniform among all four agencies to be eligible for a zero percent risk weight, thereby eliminating the current difference among the agencies. In general, this proposal would allow institutions supervised by the FDIC and the OTS to hold less capital for transactions collateralized by cash or U.S. or OECD government securities. The agencies are continuing to discuss how they should proceed in order to implement a uniform risk-based capital treatment for collateralized transactions. However, due to the amount of time since the issuance of their 1996 joint proposal, the agencies would likely need to issue another proposed rule for collateralized transactions before they could move forward with a final rule.

B.6. Noncumulative Perpetual Preferred Stock

Under the banking and thrift agencies' capital standards, noncumulative perpetual preferred stock is a component of Tier 1 capital. The FDIC's capital standards define noncumulative perpetual preferred stock as perpetual preferred stock where the issuer has the option to waive the payment of dividends and where the dividends so waived do not accumulate to future periods and do not represent a contingent claim on the issuer. Under the FRB's capital standards, perpetual preferred stock is noncumulative if the issuer has the ability and legal right to defer or eliminate preferred dividends. For these two agencies, for a perpetual preferred stock issue to be considered noncumulative, the issue may not permit the accruing or payment of unpaid dividends in any form, including the form of dividends payable in common stock. Thus, if the issuer of perpetual preferred stock is required to pay dividends in a form other than cash when cash dividends are not or cannot be paid, the issuer does not have the option to waive or eliminate dividends and the stock would not qualify as noncumulative. The OCC's capital standards do not explicitly define noncumulative perpetual preferred stock, but the OCC normally has not considered perpetual preferred stock issues with this type of dividend requirement to be noncumulative.

The OTS defines as noncumulative those issues of perpetual preferred stock where the unpaid dividends are not carried over to subsequent dividend periods. This definition does not address the issuer's ability to waive dividends. As a result, the OTS has permitted perpetual preferred stock issues that require the payment of dividends in the form of stock in the issuer when cash dividends are not paid to qualify as noncumulative.

B.7. Limitation on Subordinated Debt and Limited-Life Preferred Stock

Consistent with the Basel Accord, the internationally agreed-upon risk-based capital framework which the banking agencies' risk-based capital standards implement, the banking agencies limit the amount of subordinated debt and intermediate-term preferred stock that may be treated as part of Tier 2 capital to an amount not to exceed 50 percent of Tier 1 capital. In addition, all maturing capital instruments must be discounted by 20 percent in each of the last five years before maturity. The banking agencies adopted this approach in order to emphasize equity versus debt in the assessment of capital adequacy.

The OTS has no limitation on the ratio of maturing capital instruments as part of Tier 2 capital. Furthermore, for all maturing instruments issued after November 7, 1989, thrifts have the option of using either (a) the discounting approach used by the banking regulators, or (b) an approach which allows for the full inclusion of all such instruments provided that the amount maturing in any one year does not exceed 20 percent of the thrift's total capital. As for maturing capital instruments issued on or before November 7, 1989, the OTS has grandfathered them with respect to the discounting requirement.

B.8. Privately-Issued Mortgage-Backed Securities

The banking agencies, in general, place privately-issued mortgage-backed securities in either the 50 percent or 100 percent risk-weight category, depending upon the appropriate risk category of the underlying assets. However, privately-issued mortgage-backed securities, if collateralized by government agency or government-sponsored agency securities, are generally assigned to the 20 percent risk weight category.

The OTS assigns privately-issued high-quality mortgage-related securities

to the 20 percent risk weight category. In general, these are privately-issued mortgage-backed securities that are rated in one of the two highest rating categories, *e.g.,* AA or better, by at least one nationally recognized statistical rating organization.

The four agencies' previously mentioned March 8, 2000, proposed risk-based capital amendments include a multi-level approach for determining the capital requirements for positions in securitizations, including privately-issued mortgage-backed securities, according to their relative risk exposure. Under this approach, mortgage-backed securities in the two highest rating categories would be assigned to the 20 percent risk category. If the agencies were to adopt this approach in any final rule resulting from the proposal, this interagency difference would be eliminated.

B.9. Nonresidential Construction and Land Loans

The banking agencies assign loans for nonresidential real estate development and construction purposes to the 100 percent risk weight category. The OTS generally assigns these loans to the same 100 percent risk category. However, if the amount of the loan exceeds 80 percent of the fair value of the property, the OTS deducts the excess portion from assets and total capital.

B.10. ''Covered Assets''

The banking agencies generally place assets subject to guarantee arrangements by the FDIC or the former Federal Savings and Loan Insurance Corporation in the 20 percent risk weight category. The OTS places these ''covered assets'' in the zero percent risk-weight category.

B.11. Pledged Deposits and Nonwithdrawable Accounts

The OTS' capital standards permit savings associations to include pledged deposits and nonwithdrawable accounts that meet OTS' criteria, Income Capital Certificates, and Mutual Capital Certificates in regulatory capital.

Instruments such as pledged deposits, nonwithdrawable accounts, Income Capital Certificates, and Mutual Capital Certificates do not exist in the banking industry and are not addressed in the banking agencies' capital standards.

C. Differences in Accounting Standards Among the Federal Banking and Thrift Agencies

C.1. Push Down Accounting

Push down accounting is the establishment of a new accounting basis for a depository institution in its separate financial statements as a result of a substantive change in control. Under push down accounting, when a depository institution is acquired in a purchase (but not in a pooling of interests), yet retains its separate corporate existence, the assets and liabilities of the acquired institution are restated to their fair values as of the acquisition date. These values, including any goodwill, are reflected in the separate financial statements of the acquired institution as well as in any consolidated financial statements of the institution's parent.

The banking agencies require push down accounting when there is at least a 95 percent change in ownership. This approach is generally consistent with accounting interpretations issued by the staff of the Securities and Exchange Commission.

The OTS requires push down accounting when there is at least a 90 percent change in ownership.

C.2. Negative Goodwill

Under Accounting Principles Board Opinion No. 16, ''Business Combinations,'' negative goodwill arises when the fair value of the net assets acquired in a purchase business combination exceeds the cost of the acquisition and a portion of this excess remains after the values otherwise assignable to the acquired noncurrent assets have been reduced to zero.

The banking agencies require negative goodwill to be reported as a liability on the balance sheet and do not permit it to be netted against any goodwill that is included as an asset. This ensures that all goodwill assets are deducted in regulatory capital calculations consistent with the Basel Accord.

The OTS permits negative goodwill to offset goodwill assets on the balance sheet.

Dated at Washington, D.C., this 26th day of June, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–16575 Filed 6–29–00; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE

Sunshine Act meeting; Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, July 5, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: June 28, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–16714 Filed 6–28–00; 10:44 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Communicable Diseases Advisory Council; Establishment

AGENCY: Department of Health and Human Services.

ACTION: Notice of establishment of advisory council.

SUMMARY: The Secretary of Health and Human Services has established the Communicable Diseases Advisory Council (CDAC) to provide advice on communicable diseases, regulations, and related matters, formerly provided by the National Advisory Health Council (NAHC) for control of communicable diseases pursuant to section 361 of the Public Health Service (PHS) Act. The members of the CDAC are the Assistant Secretary for Health, the Surgeon General of the Public Health Service, the Director of the National Institutes of Health, the Director of the Centers for Disease Control and Prevention, the Commissioner of Food and Drugs, the Director of the National Institute of Allergy and Infectious Diseases, and the Director of the National Center for Infectious Diseases. The CDAC is chaired by the Assistant Secretary for Health. Section 361 of the PHS Act (42 U.S.C. 264) requires certain advisory

functions related to control of communicable diseases to be performed by the NAHC. The NAHC was terminated by section 3(a)(1) of Pub. L. 99–158 (99 Stat. 878). Section 222 of the PHS Act (42 U.S.C. 217a) authorizes the appointment of such advisory councils as the Secretary deems appropriate, and Reorganization Plan No. 3 of 1966 transferred all functions of the Surgeon General of the Public Health Service to the Secretary.

FOR FURTHER INFORMATION CONTACT: Direct questions concerning this Advisory Council to LaVerne Burton, Executive Secretary. Ms. Burton can be reached by mail at 200 Independence Ave., SW, Washington, DC 20201, or by phone at 202–690–5627.

Dated: June 27, 2000.

Donna E. Shalala,

Secretary.

The Secretary of Health and Human Services

Washington, DC 20201

Communicable Diseases Advisory Council

A Communicable Diseases Advisory Council (the Council) is hereby established to provide advice on communicable diseases, regulations, and related matters, formerly provided by the National Advisory Health Council for control of communicable diseases pursuant to Section 361 of the Public Health Service Act (PHS Act).

The members of the Council are the Assistant Secretary for Health, the Surgeon General of the Public Health Service, the Director of the National Institutes of Health, the Director of the Centers for Disease Control and Prevention, the Commissioner of Food and Drugs, the Director of the National Institute of Allergy and Infectious Diseases and the Director of the National Center for Infectious Diseases.

The Council shall be chaired by the Assistant Secretary for Health, who shall convene the Council as necessary and who shall be responsible for rendering any advice or reports required of the Council.

Authority: Section 361 of the PHS Act [42 U.S.C. 264] requires certain advisory functions related to control of communicable diseases to be performed by the National Advisory Health Council (NAHC). The NAHC was terminated by Section 3(a)(1) of PL 99–158 (99 Stat. 878). Section 222 of the PHS Act (42 U.S.C. 217a) authorizes the appointment of such advisory councils as the Secretary deems appropriate, and Reorganization Plan No. 3 of 1966 transferred all functions of the Surgeon General of the Public Health Service to the Secretary.

Donna E. Shalala,

Secretary.

[FR Doc. 00–16654 Filed 6–29–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Draft Public Health Action Plan To Combat Antimicrobial Resistance; Correction

In the notice document appearing on page 38832 in the **Federal Register** issue of Thursday, June 22, 2000, make the following corrections:

On page 38833 under both headings **FOR FURTHER INFORMATION CONTACT** and **ADDRESSES** the fax number should read: 404/371–5489; the URL is: http://www.cdc.gov/drugresistance/actionplan/.

Dated: June 26, 2000.

Thena M. Durham,

Director, Executive Secretariat, Centers for Disease Control and Prevention.

[FR Doc. 00–16548 Filed 6–29–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–1763]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Request for Termination of Premium Hospital and/or Supplementary Medical Insurance and Supporting Regulations in 42 CFR 406.28 and 407.27;

Form No.: HCFA–1763 (OMB No. 0938–0025);

Use: The HCFA–1763 is used by beneficiaries to request voluntary termination from premium hospital and/or supplementary medical insurance.

Frequency: One time only;

Affected Public: Individuals or Households, Federal Government, and State, Local or Tribal Government;

Number of Respondents: 14,000;

Total Annual Responses: 14,000;

Total Annual Hours: 5,833.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: June 22, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–16595 Filed 6–29–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–295]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the

Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection.

Title of Information Collection: Medicare CAHPS Disenrollment Survey.

Form No.: HCFA–R–295 (OMB# 0938–0779).

Use: This survey is used to collect information from Medicare beneficiaries who have disenrolled from their health plans during the past year. The purpose of this information is to obtain their ratings of their former plans and the reasons why they left. The survey results will be reported to all beneficiaries in print and on the Internet for the purpose of informed choices. Secondary uses of survey results include quality improvement and contract oversight.

Frequency: Quarterly, Annually.

Affected Public: Individuals or Households.

Number of Respondents: 112,800.

Total Annual Responses: 90,240.

Total Annual Hours: 39,744.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 30, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–16594 Filed 6–29–00; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–0368 and HCFA–R–0144]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request; Extension of a currently approved collection; *Title of Information Collection:* Medicaid Drug Rebate; *Form No.:* 0938–0582; *Use:* Section 1927 requires State Medicaid agencies to report to drug manufacturers and HCFA on the drug utilization for their State and the amount of rebate to be paid by the manufacturer; *Frequency:* Quarterly; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 51; *Total Annual Responses:* 204; *Total Annual Hours:* 6,125.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: May 25, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–16596 Filed 6–29–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–0367, 0367a, b, and c]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicaid Drug Rebate Program—Manufacturers; *Form No.:* HCFA–0367 and 0367a, b, and c (0938–0578); *Use:* Section 1927 requires drug manufacturers to enter into and have in effect a rebate agreement with

the Federal Government for States to receive funding for drugs dispensed to Medicaid recipients; *Frequency:* Quarterly; *Affected Public:* Business or other for-profit; *Number of Respondents:* 551; *Total Annual Responses:* 2,204; *Total Annual Hours:* 54,660.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 25, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–16597 Filed 6–29–00; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–317]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection.

Title of Information Collection: Evaluation of Qualified Medicare Beneficiary (QMB) and Specified Low-Income Medicare Beneficiary (SLMB) Outreach Activities.

Form No.: HCFA–R–317 (OMB# 0938–NEW).

Use: State Medicaid and other State agencies that assist the Medicare population will be queried regarding specific outreach activities to Medicare beneficiaries that qualify for QMB-only and SLMB-only benefits. With this information, the effectiveness of specific outreach activities can then be evaluated. The results of the evaluation can be used to identify those outreach activities that are most cost effective. For effective outreach activities, the results can also be used to determine optimal levels of outreach efforts (e.g., expenditures).

Frequency: Annually.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 51.

Total Annual Responses: 51.

Total Annual Hours: 102.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 12, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–16598 Filed 6–29–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed 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: Evaluation of Dental Scholarship Pilot Program—New

The establishment of a Dental Scholarship Pilot Program by the Health Resources and Services Administration (HRSA) will provide education and community services training for twenty to twenty-five National Health Service Corps (NHSC) scholarship students from up to nineteen dental schools. During the two year pilot, annual surveys will be sent to students, dental schools, and partners. Four site visits will be made each year with up to four interviews per site visit. These surveys and interviews will assess dental school and partner performance in meeting the requirements of the pilot program, and the experience of the students in receiving exposure and training to community service in underserved areas.

The estimated annual response burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Survey	78	1	2	156
Interview	16	1	2	32
Total	94			188

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 23, 2000.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–16552 Filed 6–29–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Increasing Donor Awareness on College Campuses: New

Despite apparent widespread public support for organ donation and transplantation, few individuals in the United States declare intent to be organ and tissue donors. Innovative interventions are necessary to help individuals move from positive attitudes about organ donation to the behaviors of declaring intent and informing family of that intent. The goal of the current project is to develop, implement and evaluate a donor awareness program on college and university campuses. The specific aim of the study is to evaluate the effect of a 6-month college-wide intervention program on organ donation intentions. An experimental design will be used consisting of two pairs of colleges matched on variables including freshman class size, geographic region, and cultural diversity of the student body. The study will use a 2 (Intervention × Control) by 2 (baseline and follow-up assessment) repeated measures design. To increase donor awareness, intervention schools will receive a ''how to kit'' to aid them in implementing a campus-wide donor campaign. This kit will provide materials and activities, and serve as a guide for initiating an organ and tissue donor awareness campaign. The kits will be standardized across schools. Donation intentions and other variables of interest will be assessed by means of self-administered questionnaires completed by a sample of students at each university at two time periods, prior to and following the 6-month intervention period. The frequency of students declaring intent to donate organs and documenting that intent via college student identification cards or donor cards is the primary outcome measure. The frequency of students reporting that they have informed family members of their donation intent also will be evaluated. In addition, secondary and process outcomes (*e.g.,* levels of readiness to become an organ donor) will be assessed.

The estimated respondent burden is as follows:

Survey phase	No. of Respondents	Responses per respondent	Total responses	Average time per response	Total burden hours
Baseline	4,000	1	4,000	.3	680
Followup	2,800	1	2,800	.3	476
Total	4,000		6,800		1,156

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 23, 2000.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–16551 Filed 6–29–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel, Gene Expression in Cancer by Microarray Hybridization.

Date: July 19, 2000.

Time: 6:00 p.m. to 10:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Sherwood Githens, PhD, Scientific Review Administrator, National Institutes of Health, National Cancer Institute, Special Review, Referral and Resources Branch, 6116 Executive Boulevard, Room 8068, Bethesda, MD 20892, (301) 435–1822.

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovative Technologies for the Molecular Analysis of Cancer.

Date: July 20–21, 2000.

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: Sherwood Githens, PhD, Scientific Review Administrator, National Institutes Of Health, National Cancer Institute, Special Review, Referral and Resources Branch, 6116 Executive Boulevard, Room 8068, Bethesda, MD 20892, (301) 435–1822.

(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: June 26, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–16610 Filed 6–29–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; 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 Center for Research Resources Special Emphasis Panel Comparative Medicine.

Date: July 11, 2000.

Time: 7:30 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: The Ritz-Carlton San Juna Hotel, 6961 Avenue of the Governors, Isla Verde, PR 00979.

Contact Person: William C. Angus, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0812.

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; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: June 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–16620 Filed 6–29–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

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 Diseases Special emphasis Panel, ZDK1 GRB–6 (01).

Date: July 21, 2000.

Time: 9 am to 12 pm

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 300 Army Navy Drive, Arlington, VA 22202.

Contact Person: Neal A. Musto, PHD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 651, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, DK1 GRB–6(03).

Date: July 21, 2000.

Time: 1 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 300 Army Navy Drive, Arlington, VA 22202.

Contact Person: Neal A. Musto, PHD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 651, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–6(04).

Date: July 21, 2000.

Time: 3:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 300 Army Navy Drive, Arlington, VA 22202.

Contract Person: Neal A. Musto, PHD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 651, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–3(M).

Date: July 25, 2000.

Time: 2 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: 6707 Democracy Blvd, Two Democracy Plaza, 6th Floor, Room 641, MSC 5452, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michele L. Barnard, PHD, Scientific Review Administrator, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institute of Health, Room 657, 6707 Democracy Boulevard, Bethesda, MD 20892, (301) 594–8898.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–3 (01).

Date: August 2, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Michele L. Barnard, PHD, Scientific Review Administrator, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 657, 6707 Democracy Boulevard, Bethesda, MD 20892, (301) 594–8898.

(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: June 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–16611 Filed 6–29–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(b)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such a patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: August 7, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Hameed Khan, PHD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Heath, and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: June 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–16612 Filed 6–29–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosures of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: July 21, 2000.

Time: 2 pm. to 3:30 pm.

Agenda: To review and evaluate contract proposals.

Place: 6100 Executive Blvd. 5th Floor, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Hameed Khan, PHD, Scientific Review Administrator, Division of Scientific Review, National Institutes of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: June 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Policy.

[FR Doc. 00–16613 Filed 6–29–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: July 7, 2000.

Time: 10 am to 2 pm.

Agenda: To review and evaluate grant applications.

Place: 6700B Rockledge Drive, Room 1205, Bethesda, MD 20892.

Contact Person: Anna Ramsey-Ewing, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301 496–2550, ar15o@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 21, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–16615 Filed 6–29–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.
Date: July 17, 2000.
Time: 3 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: 6700B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Nancy B. Saunders, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301 496–2550, ns120v@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: June 21, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–16616 Filed 6–29–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 Dental and Craniofacial Research Special Emphasis Panel 00–75, Review of RFA DE–00–003.
Date: July 25, 2000.
Time: 8 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Yujing Liu, MD, PHD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 00–76, Review of RFA DE–00–004.
Date: July 25, 2000.
Time: 8:30 am to 5 pm.
Agenda: To review and evaluate grant applications and/or proposals.
Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.
Contact Person: Yujing Liu, MD, PHD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 00–74, Review of r01 Grant.
Date: August 3, 2000.
Time: 1 pm to 2:00 pm.
Agenda: To review and evaluate grant applications.
Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Philip Washko, PHD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 00–69, Review of R44.
Date: August 16, 2000.
Time: 11 am. to 1 pm.
Agenda: To review and evaluate grant applications.
Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Philip Washko, PHD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 20, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–16617 Filed 6–29–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel Health Disparities: Linking Biological and Behavioral Mechanisms with Social and Physical Environments.
Date: July 11–13, 2000.
Time: 7:00 pm to 1:00 pm.
Agenda: To review and evaluate grant applications.
Place: Hawthorn Suites Hotel, 300 Meredith Drive, Durham, NC 27713.
Contact Person: J. Patrick Mastin, PhD, Scientific Review Administrator, SRB/DERT, NIEHS, P.O. Box 12233 MD EC–30, Research Triangle Park, NC 27709, (919) 541–1446.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Conference Grants (R13s).
Date: July 17, 2000.
Time: 1:00 pm to 2:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIEHS-East Campus, 79 T W Alexander Dr., Bldg. 4401 Rm EC–122, Research Triangle Park, NC 27709, (Telephone Conference Call).
Contact Person: J. Patrick Mastin, PhD, Scientific Review Administrator, SRB/DERT, NIEHS, P.O. Box 12233 MD EC–30, Research Triangle Park, NC 27709, (919) 541–1446.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Conference Grants (R13s).
Date: July 17, 2000.
Time: 2:00 pm to 3:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIEHS-East Campus, 79 T W Alexander Dr., Bldg. 4401 Rm EC–122, Research Triangle Park, NC 27709, (Telephone Conference Call).
Contact Person: J. Patrick Mastin, PhD, Scientific Review Administrator, SRB/DERT, NIEHS, P.O. Box 12233 MD EC–30, Research Triangle Park, NC 27709, (919) 541–1446.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Conference Grants (R13s).
Date: July 18, 2000.
Time: 1:00 pm to 2:00 pm.
Agenda: To review and evaluate grant applications.
Place: NIEHS-East Campus, 79 T W Alexander Dr., Bldg. 4401 Rm 3167, Research Triangle Park, NC 27709, (Telephone Conference Call).
Contact Person: J. Patrick Mastin, PhD, Scientific Review Administrator, SRB/DERT, NIEHS, P.O. Box 12233 MD EC–30, Research Triangle Park, NC 27709, (919) 541–1446.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—

Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: June 20, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–16618 Filed 6–29–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: July 10, 2000.

Time: 12:00 pm to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Sue Krause, MEDS, Scientific Review Administrator, Division of Extamural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, Bethesda, MD 20892–9606, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Emphasis Panel.

Date: July 31, 2000.

Time: 10:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS).

Dated: June 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–16619 Filed 6–29–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Neurological Sciences and Disorders B, June 22, 2000, 8 am to June 23, 2000, 5 pm, Radisson Barcelo Hotel, 2121 P St., NW, Washington, DC 20037 which was published in the **Federal Register** on April 26, 2000, 65 FR 24493.

The meeting will be held on June 22, 2000, 8 am to 5 pm. The meeting is closed to the public.

Dated: June 20, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–16621 Filed 6–29–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: July 13, 2000.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Madison Hotel, 15th and M Streets, NW., Washington, DC 20005.

Contact Person: Alan L. Willard, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: June 23, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–16622 Filed 6–29–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: June 26–27, 2000.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Houston Baker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112,

MSC 7854, Bethesda, MD 20892–7854, (301) 435–1775, bakerh@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel P41.

Date: July 10, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Grand Hotel, 2350 M Street, NW., Washington, DC 20037.

Contact Person: Marjam G. Behar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1180.

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: July 10–11, 2000.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.

Contact Person: Thomas A. Tatham PhD, Scientific Review Administrator, Center for Scientific Review; National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692, tathamt@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific review Special Emphasis Panel.

Date: July 10, 2000.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20892.

Contact Person: Gopa Rakhig, PhD, Scientific Review Administrator, Center for Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–1721.

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: July 10–11, 2000.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Houston Baker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892-7854, (301) 435–1175 bakerh@csr. nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: July 10, 2000.

Time: 1:00 pm. to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Nunn, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910.

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: July 10–12, 2000.

Time: 7:00 pm. to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, (301) 435–1260.

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: July 11, 2000.

Time: 8:30 am. to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.

Contact Person: Herman Teitelbaum, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–1254.

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: July 11, 2000.

Time: 1:00 pm. to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jerry L. Klein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7804, Bethesda, MD 20892, (301) 435–1213.

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; July 11, 2000.

Time: 1:30 pm. to 2:45 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dennis Leszczynski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

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: June 21, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–16614 Filed 6–29–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301)443–7978.

Survey of Organized Consumer Self-Help Entities—New—The self-help movement in the United States has mushroomed, and increasingly serves mental health consumers and family members as a complement to, or substitution for, traditional mental health services. The purposes of this project of SAMHSA's Center for Mental Health Services are to estimate the number of self-help entities nationwide and to describe their characteristics—structure, types of activities engaged in, approaches to well-being and recovery, resources, and linkages to other entities in the community, such as the mental health service delivery system. The survey will gather information from a sample of approximately 3,900 mental health self-help entities run by and for recipients of mental health services and/or their family members. Data will be

collected from three types of self-help entities: mutual support groups; self-help organizations; and, consumer-operated businesses and services. Computer Assisted Telephone Interviewing (CATI) will be used to conduct interviews with in-scope entities. The total response burden estimate is shown below.

Instrument	Number of respondents	Responses/respondent	Average burden/ response (hours)	Total burden (hours)
Universe Development Contacts	2,736	1	.17	465
Screener	3,933	1	.17	668
Questionnaire	3,933	1	.42	1,652
Total				2,785

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Clarissa Rodriques-Coelho, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 23, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–16549 Filed 6–29–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4563–N–08]

Notice of Proposed Information Collection for Public and Indian Housing-Economic Development and Supportive Services Program (EDSS)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 29, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Annual Report.

OMB Control Number: 2577–0211.

Description of the need for the information and proposed use: Grantees participating in EDSS are required to submit to HUD an annual progress report, participant evaluation and assessment data and other information, regarding the effectiveness of the Program activities, No grant payments will be approved for drawdown through the Line of Credit Control System/Voice Response System (LOCCS/VRS) for grantees with overdue progress reports.

Agency form numbers: None.

Members of affected public: State, Local or Tribal government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 224 EDSS grantees, annual, eight hours per response, 1,792 hours total reporting burden.

Status of the proposed information collection: Extension.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: June 26, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–16530 Filed 6–29–00; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4563–N–07]

Notice of Proposed Information Collection for Public Comment for the Comprehensive Improvement Assistance Program (CIAP); Budget/ Progress Report, Actual Modernization Cost Certificate

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 29, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Comprehensive Improvement Assistance Program (CIAP): CIAP Budget/Progress Report, Actual Modernization Cost Certificate (AMCC).

OMB Control Number: 2577–0044.

Description of the need for the information and proposed use: When requested by HUD, grantees must prepare the CIAP Budget for the modernization program, describing the activities which are planned to be undertaken with the CIAP funds. On an as-needed basis, grantees can submit a revised CIAP Budget when prior HUD approval is required to revise the Budget. Grantees prepare and submit the Progress Report until all funds are expended. Grantees prepare and submit the Actual Modernization Cost Certificate (AMCC) for each terminated or completed modernization program under CIAP. The CIAP Budget and Progress Report are the controlling documents during implementation in terms of HUD-approved work items and costs.

Agency form numbers, if applicable: HUD–52825; HUD–53001.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 1,000 respondents (grantees); HUD–52825, once, 8 hours per response, 8,000 hours reporting; HUD–53001, once, 2 hours per response, 2000 hours reporting; 10,000 hours total reporting burden.

Status of the proposed information collection: Reinstatement.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C.

Chapter 35, as amended.

Dated: June 26, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

CIAP Budget /Progress Report

Part II: Supporting Pages

Comprehensive Improvement Assistance Program (CIAP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Develop ment Number	Description of Work Items	Development Account Number	Funds Approved			Funds Obligated	Funds Expended
			Original	Revised	Difference		

Page ___ of ___

form **HUD-52825** (10/96)
ref Handbook 7485.1

CIAP Budget /Progress Report

Part III: Implementation Schedule

Comprehensive Improvement Assistance Program (CIAP)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Development Number	Architect/Engineer Contract Awarded			All Funds Obligated			All Funds Expended		
	Original	Revised (Attach explanation)	Actual	Original	Revised (Attach explanation)	Actual	Original	Revised (Attach explanation)	Actual

Page ___ of ___

form **HUD-52825** (10/96)
ref Handbook 7485.1

Public reporting burden for this collection of information is estimated to average 12 hours 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. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

This collection of information requires that each eligible applicant submit information to HUD after selected for funding in order to receive its grant. This information will be used by HUD to determine whether the applicant/grantee is meeting statutory and regulatory requirements related to funding and during implementation. Responses to the collection are required by Section 14(d) of the U.S. Housing Act of 1937, as amended The information requested does not lend itself to confidentiality.

Instructions for Preparation of Form HUD-52825, CIAP Budget/Progress Report, Part I

Report Submission:

For the CIAP Budget:

When requested by HUD, prepare a separate form HUD-52825 (Parts I, II and III) for the modernization program, describing the activities which are planned to be undertaken with the CIAP funds. Submit the original and two copies (or any lesser number of copies as specified by HUD) of this form to the HUD Field Office. On an as-needed basis, submit a revised form when prior HUD approval is required to revise the CIAP Budget.

For the Progress Report:

For of each six-month period ending 9/30 and 3/31, complete the sections of Parts I, II and III as noted on a copy of the original or revised CIAP Budget and mark the box, Progress Report for Period Ending _____. Submit the form and two copies to HUD, together with the narrative report on management improvements, if applicable, within 30 calendar days after the end of the six-month period. Continue reporting every six months until all funds are expended.

Part I: Summary

Heading Instructions:

HA Name - Enter the Housing Authority (HA) name.

Modernization Project Number - Enter the unique Modernization Project number designated for the CIAP grant. This number is an 13-digit alpha numeric code as follows: two-digit State code (alpha); two-digit Field Office code (numeric); P for Public Housing; three-digit HA number; three-digit Grant number, beginning with the number "9"; and a two-digit Federal Fiscal Year (FFY) identifier. The first CIAP grant approved shall be 901; e.g., VA05P03690195. The second CIAP grant approved shall be 902; e.g., VA05P03690296.

FFY of Grant Approval - Enter the FFY in which the grant is being approved/was approved.

Type of Submission - Check the appropriate box and indicate whether the submission is the Original CIAP Budget, the Revised CIAP Budget (and revision number), or the Progress Report for Period Ending (enter date, e.g., 9/30/96 or 3/31/96). Also, check the box, Final Progress Report, if the form is being submitted for the last time for the particular modernization program.

Total Funds Approved:

Lines 1 through 15 - For each line, enter the Original Total Funds Approved or zero if no work will be undertaken in a particular development account. For budget revision #1, enter any cost decrease or increase in the Revised Total Funds Approved. For budget revision #2, enter the previous Revised Total Funds Approved for revision #1 in the Original column.

Line 16 - Amount of CIAP Grant - Enter the sum of lines 2 through 15 in the Original Total Funds Approved column. After initial approval by HUD, the sum of lines 2 through 15 in the Revised Total Funds Approved column may not exceed line 16 in the Original Total Funds Approved column.

Line 17 - Amount of line 16 Related to Lead-Based Paint (LBP) Activities - Enter the amount of line 16 related to LBP activities in the Original Total Funds Approved column and, as appropriate, in the Revised Total Funds Approved column.

Line 18 - Amount of line 16 Related to Section 504 Compliance - Enter the amount of line 16 related to Section 504 compliance in the Original Total Funds Approved column and, as appropriate, in the Revised Total Funds Approved column.

Line 19 - Amount of line 16 Related to Security - Enter the amount of line 16 related to security in the Original Total Funds Approved column and, as appropriate, in the Revised Total Funds Approved column.

Line 20 - Amount of line 16 Related to Energy Conservation Measures - Enter the amount of line 16 related to energy conservation measures in the Original Total Funds Approved column and, as appropriate, in the Revised Total Funds Approved column.

Total Funds Obligated/Expended:

At the end of the reporting period, i.e, 9/30 and 3/31, for each modernization program for which funds are still being expended, complete this section.

Lines 1 through 15 - For each line, enter the cumulative Total Funds Obligated and Expended at the end of the reporting period.

Line 16 - Enter the sum of lines 2 through 15 for obligated and expended.

Lines 17 through 20 - For each line, enter the amount of line 16 for obligated and expended.

Instructions for Preparation of Form HUD-52825, CIAP Budget/Progress Report, Part II

Part II: Supporting Pages

Development Number - Enter the abbreviated number (e.g., VA-36-1) of the development where the work items will be undertaken. Enter "HA-wide" for work items that relate to an HA-wide activity (e.g., management improvements, administration, non- dwelling equipment).

Description of Work Items - For each development listed, enter a description of all work items (physical or management, as applicable) that will be undertaken at that development, including work that will be funded with non-CIAP funds and no cost items, before listing work items to be undertaken at other developments. Identify work items that will be accomplished by Force Account labor by entering (FA) in parenthesis next to the work item. PHAs that are designated as both overall high performers and Mod-high performers under the PHMAP do not have to identify work items that will be accomplished by FA. After entering all work items for all developments being funded, enter a general description of HA-wide activities, such as management improvements, administrative costs, equipment, etc. When work items are subsequently deleted, draw a line through the Description, Development Account Number, and Funds Approved. When work items are subsequently added, enter the new work item under the appropriate development number. Enter the quantity of the work as a percentage or whole number. Specify the per unit cost or the quality of materials. **Note:** Describe administrative costs in sufficient detail to clearly identify items.

Development Account Number - For work items that will be funded from CIAP funds, enter the appropriate development account which corresponds to the work item described under the Description of Work Items column. For appropriate development accounts, refer to Handbook 7485.1 (latest revision). Where funding will be provided from non-CIAP sources, or the work is a no cost item, enter "NA".

Funds Approved:

Original - For each work item and HA-wide activity described, enter the Original Funds Approved. Where appropriate, add a reasonable contingency amount to each work item and indicate the percentage. Asterisk the estimated cost of each work item that will be funded with non-CIAP funds. After listing the estimated cost for all work items at a particular development, enter a subtotal of the estimated cost of only the work items that will be funded from CIAP funds. (**Note**: Do not count costs that have been asterisked in this subtotal). Enter a grand total for Part II of only the work items and HA-wide activities that will be funded with CIAP funds.

Revised - Where the funds approved is revised, enter a Revised Funds Approved as appropriate.

Difference - Enter the difference between the Original and Revised Funds Approved. If the cost increases, put a plus (+) in front of the dollar amount. If the cost decreases, put a minus (-) in front of the dollar amount. When a new work item is subsequently added, enter zero in the original column, show the cost in the revised column and in the column marked difference and put a plus (+) in front of the dollar amount. When a work item is subsequently deleted, show the original cost in the column marked difference and put a minus (-) in front of the dollar amount. Each time there is an increase or decrease in the dollar amount for a particular work item, it must be offset by a corresponding increase or decrease in another work item so that the Revised Total Funds Approved is equal to the amount of the CIAP grant. When prior HUD approval is required before obligating additional funds, complete this form with the appropriate revisions and mark the box Revised CIAP Budget Revision Number _____.

Funds Obligated-Funds Expended - At the end of each reporting period for each CIAP grant with a separate Modernization Project Number for which funds are still being expended, complete the section on Funds Obligated and Funds Expended.

Funds Obligated - In this column, for each development listed, enter the cumulative dollar amount of all funds obligated for that development opposite the Funds Approved subtotal. This includes funds obligated by the HA for work to be performed by contract labor (i.e., contract award) and force account labor (i.e., work actually started). Funds that are recorded as being obligated shall remain obligated so that total funds obligated are always greater than or equal to total funds expended. Total funds obligated shall not exceed the amount of the CIAP grant. For each HA-wide activity listed, enter the total amount of all funds obligated for that activity opposite the Funds Approved subtotal.

Funds Expended - In this column, for each development listed, enter the cumulative dollar amount of all funds expended for that development opposite the Funds Approved subtotal. Total funds expended means cash actually disbursed and does not include retainage. Total funds expended shall not exceed total funds obligated or the amount of the CIAP grant. For each HA-wide activity listed, enter the dollar amount of funds expended for that activity opposite the Funds Approved subtotal.

Instructions for Preparation of Form HUD-52825, CIAP Budget/Progress Report, Part III

Part III: Implementation Schedule:

Development Number - Enter the abbreviated number (e.g., VA 36-1) of each development listed on Part II. Enter "HA-wide" for work items that relate to HA-wide physical or management improvements.

Implementation Schedule - Architect/Engineer Contract Awarded - Opposite each development, and for each HA-wide physical improvement, enter the estimated quarter ending date for award of the architect/engineer (A/E) contract under the Original column. After initial approval by HUD, enter any revised quarter ending date for award of the A/E contract under the Revised column. When the A/E contract is awarded, enter the quarter ending date under the Actual column.

Implementation Schedule - All Funds Obligated - Opposite each development and for each HA-wide physical or management improvement, enter the estimated quarter ending date for obligation of all funds under the Original column.

Note: Provide an implementation schedule only for HA-wide physical or management improvements, not for other HA-wide activities (e.g., administration, non-dwelling equipment).

After initial approval by HUD, the HA may revise the target date for fund obligation for delays outside of the HA's control. The HA is required to request HUD approval to revise target dates for delays within the HA's control. Enter any revised quarter ending date for obligation of all funds under the Revised column. When all funds are obligated, enter the quarter ending date under the Actual column.

Implementation Schedule - All Funds Expended - Opposite each development and for each HA-wide physical or management improvement, enter the estimated quarter ending date for expenditure of all funds under the Original column.

Note: Provide an implementation schedule only for HA-wide physical or management improvements, not for other HA-wide activities (e.g., administration, non-dwelling equipment).

After initial approval by HUD, the HA may revise the target date for fund expenditure for delays outside of the HA's control. The HA is required to request HUD approval to revise target dates for delays within the HA's control. Enter any revised quarter ending date for expenditure of all funds under the Revised column. When all funds are expended, enter the quarter ending date under the Actual column.

Note: Attach an explanation of any revisions to the target dates for A/E contract award, fund obligation, or fund expenditure by specifying the delay outside of the HA's control or the date on which HUD approved a revised target due to delays within the HA's control.

Actual Modernization Cost Certificate

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0044 (exp. 12/31/99)
OMB Approval No. 2577-0157 (exp. 12/31/99)

Comprehensive Improvement Assistance Program (CIAP)
Comprehensive Grant Program (CGP)

Public reporting burdenfor this collection of information is estimated to average 2 hours 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0044 and 0157), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. This agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless that collection displays a valid OMB control number.

Do not send this form to the above address.

This collection of information requires that each Housing Authority (HA) submit information to enable HUD to initiate the fiscal closeout process. The information will be used by HUD to determine whether the modernization grant is ready to be audited and closed out. The information is essential for audit verification and fiscal close out. Responses to the collection are required by regulation. The information requested does not lend itself to confidentiality.

HA Name:	Modernization Project Number:

The HA hereby certifies to the Department of Housing and Urban Development as follows:

1. That the total amount of Modernization Cost (herein called the "Actual Modernization Cost") of the Modernization Grant, is as shown below:

A. Original Funds Approved	$
B. Funds Disbursed	$
C. Funds Expended (Actual Modernization Cost)	$
D. Amount to be Recaptured (A–C)	$
E. Excess of Funds Disbursed (B-C)	$

2. That all modernization work in connection with the Modernization Grant has been completed;
3. That the entire Actual Modernization Cost or liabilities therefor incurred by the HA have been fully paid;
4. That there are no undischarged mechanics', laborers', contractors', or material-men's liens against such modernization work on file in any public office where the same should be filed in order to be valid against such modernization work; and
5. That the time in which such liens could be filed has expired.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.
Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Signature of Executive Director & Date:

X

For HUD Use Only

The Cost Certificate is approved for audit:

Approved for Audit (Director, Office of Public Housing / ONAP Administrator)	Date:
X	

The audited costs agree with the costs shown above:

Verified: (Designated HUD Official)	Date:
X	
Approved: (Director, Office of Public Housing / ONAP Administrator)	Date:
X	

form **HUD-53001** (10/96)
ref Handbooks 7485.1 &.3

Instructions for Preparation of Form HUD-53001 Actual Modernization Cost Certificate

Prepare and submit to the HUD Field Office an original and one copy of form HUD-53001 for each terminated or completed modernization program under the Comprehensive Improvement Assistance Program (CIAP) or Comprehensive Grant Program (CGP).

Heading Instructions:

HA Name - Enter the name of the Housing Authority (HA).

Modernization Project Number - Enter the unique 13-digit Modernization Project Number for the grant for which this form is being submitted. This number is the same number as on form HUD-52825, CIAP Budget, or form HUD-52837, Annual Statement, for the same grant.

Line Instructions:

Line 1A, Original Funds Approved - For the identified grant, enter the total Modernization funds originally approved by HUD through a Modernization Amendment to the Consolidated Annual Contributions Contract(s).

Line 1B, Funds Disbursed - For the identified grant, enter the total funds disbursed by HUD. This amount may never exceed the amount on line 1A.

Line 1C, Funds Expended - For the identified grant, enter the total funds expended (total cash disbursed) by the HA. This amount may never exceed the amount on line 1A.

Line 1D, Amount To Be Recaptured (A minus C) - For the identified grant, enter the amount to be recaptured by subtracting line 1C from line 1A.

Line 1E, Excess of Funds Disbursed (B minus C) - For the identified grant, enter the excess of funds disbursed by subtracting line 1C from line 1B; this is the amount to be remitted by the HA to HUD. If line 1C is greater than line 1B, enter the figure in brackets; this is the amount of funds owed by HUD to the HA.

form **HUD-53001** (10/96)
ref Handbooks 7485.1 &.3

[FR Doc. 00–16532 Filed 6–29–00; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–40]

Notice of Submission of Proposed Information Collection to OMB Public Housing-Contracting With Resident-Owned Businesses Application Requirements

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment due Date:* July 31, 2000

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0161) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Public Housing-Contracting with Resident-Owned Businesses Application Requirements.

OMB Approval Number: 2577–0161.

Form Numbers: None.

Description of the need for the Information and its Proposed Use:

Respondents: Individuals or Households, Not-For-Profit Institutions, State, Local or Tribal Government.

Frequency of Submission: Reporting third party disclosure annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Recordkeeping	500		1		17		8,500

Total Estimated Burden Hours: 8,500.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 22, 2000.

Donna L. Eden,

Director, Office of Investment Strategies, Policy and Management.

[FR Doc. 00–16531 Filed 6–29–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–26]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 22, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

[FR Doc. 00–16243 Filed 6–29–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4455–C–04]

Notice of Annual Factors for Determining Public Housing Agency Ongoing Administrative Fees for the Housing Choice Voucher Program and the Rental Certificate and Moderate Rehabilitation Programs; Technical Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice; technical corrections.

SUMMARY: This notice corrects an incorrect date that appeared in the notice published on May 22, 2000.

EFFECTIVE DATE: June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Real Estate

and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone number (202) 708–0477 (this is not a toll-free telephone number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This notice corrects an incorrect date that appeared in the notice published on May 22, 2000 (65 FR 32116). The primary purpose of the May 22, 2000 notice was to transmit changes to the monthly Administrative Fee Amounts of certain areas listed in the **Federal Register** notice published on February 25, 2000 (65 FR 10316). These changes were necessary to correct a computer programming error that caused a small reduction in the fees for certain areas listed in the February 25, 2000 notice.

The May 22, 2000 notice, however, also contained an error. This notice referred to the ''merger date'' of the Housing Choice Voucher Program as October 1, 1998 (see 65 FR 32116, third column). The merger date is October 1, 1999. Through publication of this notice, HUD acknowledges this error and advises that the correct ''merger date'' is October 1, 1999.

Dated: June 23, 2000.

Gloria Cousar,

Deputy Assistant Secretary for Public and Assisted Housing Delivery.

[FR Doc. 00–16529 Filed 6–29–00; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the USGS Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 60 days directly to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192. As required by OMB regulations at CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the USGS, including whether the information will have practical utility;
2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The utility, quality, and clarity of the information to be collected; and,
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Industrial Minerals Surveys.

Current OMB approval number: 1028–0062.

Abstract: Respondents supply the U.S. Geological Survey with domestic production and consumption data on nonfuel mineral commodities. This information will be published as Annual Reports, Mineral Industry Surveys, and in Mineral Commodity Summaries for use by Government agencies, industry, and the general public.

Bureau form number: Various (40 forms).

Frequency: Monthly, Quarterly, Semiannual, and Annual.

Description of respondents: Producers and Consumers of Industrial Minerals.

Annual Responses: 19,008.

Annual burden hours: 13,185.

Bureau clearance officer: John E. Cordyack, Jr., 703–648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 00–16601 Filed 6–29–00; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–1610]

Notice of Availability of the Draft Environmental Impact Statement (EIS) for the Jack Morrow Hills Coordinated Activity Plan (JMHCAP), Sweetwater, Fremont, and Sublette Counties, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) has prepared a draft EIS for the JMHCAP. This is an integrated activity planning effort to provide more specific management direction for the BLM-administered public lands in the Jack Morrow Hills area, located in Sweetwater, Fremont, and Sublette Counties, Wyoming. The draft EIS documents the analysis of four alternatives, including BLM's preferred alterative, for managing the BLM-administered lands in the Jack Morrow Hills planning area. When completed, the JMHCAP will provide a framework for managing the BLM-administered public lands and resources and allocating some of these uses in the planning area. Specifically, this CAP is focused on resolving three resource management issues: Minerals Resource Management and related rights-of-way and the effects of associated surface disturbing and disruptive activities on wildlife, wildlife habitat, and other sensitive resources; Resource Uses Affecting Vegetation, Soils, Air, and Watershed Values, and Recreation; and Cultural Resource Management. The CAP will include land and resource management decisions for fluid mineral leasing and some for mineral location in the core area and related affected areas. These decisions were not ready for inclusion in the Green River Resource Management Plan (RMP), prepared in 1997, and were deferred to the CAP. In addition, this planning effort proposes to determine the appropriate levels and timing of leasing and development of energy resources, while sustaining the other important land and resource uses in the area, and is expected to result in modifying some existing RMP decisions. These deferred and modified RMP decisions will result in amending the Green River RMP. Other actions resulting from this planning effort would include some refinement of management prescriptions for road use and off-highway-vehicular use designations, grazing practices, recreational activities and facilities, identification of rights-of-way windows and concentration areas, and prescriptions for managing wildlife habitat.

When completed, the CAP will provide more specific management direction to address potential conflicts among potential development of energy resources, recreational activities and facilities, livestock grazing, important wildlife habitat, cultural resources, and other important resource and land uses in the planning area. The planning area encompasses approximately 574,800 acres of public land surface and Federal

mineral estate administered by the BLM through the Rock Springs Field Office in Rock Springs, Wyoming. The objective of this activity planning effort is to determine the appropriate level and methods of all the possible combinations of land and resource uses that are mutually compatible and that provide for the important resource concerns in the area, such as sustainability of crucial big game habitat, air and water quality, scenic quality, vegetative cover and soil stability, recreational activities, livestock grazing and range improvement activities, mineral development, and other important resource concerns. The CAP also provides more specific management direction for the planning area toward preventing or addressing potential conflicts among or resulting from the various uses. Other actions that may result from this planning effort include: Determining the appropriate level and timing of leasing and development of energy resources within the JMHCAP area, transportation and access planning, designation of off-highway-vehicular use, livestock grazing practices, etc.

The JMHCAP planning area encompasses the Steamboat Mountain, Greater Sand Dunes, White Mountain Petroglyphs, and Oregon Buttes Areas of Critical Environmental Concern (ACEC); a portion of the South Pass Historic Landscape ACEC; the Oregon Buttes, Honeycomb Buttes, Greater Sand Dunes, Buffalo Hump, Whitehorse Creek, South Pinnacles, and Alkali Draw Wilderness Study Areas (WSAs); and three special recreation management areas: Greater Sand Dunes, Continental Divide National Scenic Trail, and the Oregon/Mormon Pioneer/Pony Express/California National Historic Trails.

Notice is hereby given that public meetings will be held to seek public comment on the draft EIS.

DATES: Written comments will be accepted for 90 days following the date the Environmental Protection Agency publishes the notice of filing of the draft EIS for the JMHCAP in the **Federal Register**. That notice is expected to be published on July 7, 2000. Two public open houses to discuss the draft EIS will be held in Lander, Wyoming, at the Best Western Inn, on July 18, 2000, from 4–8 p.m., and in Rock Springs, Wyoming at the BLM Office on July 20, 2000, from 4–8 p.m. A field tour will be conducted on July 21, 2000. A public hearing will be held at 7 p.m. on August 23, 2000, at the Western Wyoming Community College, Room 1302, in Rock Springs. These meetings will be conducted to obtain public input and comment on the draft EIS. Future meetings or hearings and any other public involvement activities will be scheduled as needed. Notification will be through the **Federal Register**, other public notices, media news releases, or mailings.

ADDRESSES: Written comments should be sent to: JMHCAP Team Leader, Bureau of Land Management, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901, telephone number 307–352–0256. Comments submitted by electronic mail should be sent to: rock_springs_wymail@blm.gov. If you wish to withhold your name and/or street address, and private telephone number from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals representing, or who are officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Ted Murphy, Assistant Field Manager or Andy Tenney, Recreation Specialist, Rock Springs Field Office, Bureau of Land Management, office address and telephone number above.

SUPPLEMENTARY INFORMATION: Based upon concerns raised by the public during preparation of the Green River RMP, the BLM is preparing the JMHCAP. When completed, the CAP will provide management direction for the protection of important resources (*e.g.,* desert elk and other big game habitat, unique sand dune-mountain shrub habitat, unstabilized-stabilized sand dunes) while allowing for appropriate levels of leasing and development of energy resources, recreational activities, grazing practices, and other activities. The JMHCAP planning area has many pristine locations and encompasses Steamboat Mountain, the Greater Sand Dunes, Oregon Buttes and White Mountain Petroglyphs Areas of Critical Environmental Concern (ACEC), seven WSAs, and part of the South Pass Historic Landscape ACEC.

The entire JMHCAP area contains about 622,330 acres of Federal, State, and private lands. The core area, where fluid leasing and mineral location RMP decisions have been deferred, contains approximately 80,410 acres. This planning effort also addresses other concerns found within the JMHCAP area including appropriate level and timing of leasing and development of energy resources, while sustaining other important land uses and resources such as big game habitat, recreation, and grazing. Other actions considered in this planning effort include transportation planning, off-highway-vehicular use designations and designation of roads for use, identifying grazing practices, and recreational activities and associated facilities.

Public participation has been sought through scoping, public meetings, and field trips to ensure that this planning effort addresses all issues and concerns from those interested in the management of public lands within the CAP planning area.

The Draft EIS for the Jack Morrow Hills CAP describes and evaluates four alternative coordinated activity plans, including BLM's preferred alternative, for providing management direction for the BLM-administered public lands in the CAP planning area. Each alternative analyzed in detail provides a complete and reasonable plan that could be used to guide the management of the planning area.

The preferred alternative consists of management actions derived from the other alternatives analyzed in detail, and a few management actions that are unique to the Preferred Alternative. Development of the preferred alternative was based on the analysis of the other alternatives and was formulated to represent the BLM's preference of the best mix and balance of multiple-use land and resource management for the BLM-administered public lands in the planning area.

There are five ACECs in the planning area and the designations on these ACECs were retained in the Green River RMP. However, one alternative considers expanding two of the ACECs, one of which is not currently within the planning area. The Special Status Plant Species ACEC (located outside the planning area) would be expanded to include lands within the CAP planning area that are occupied by populations of *Lesquerella macrocarpa,* and the Steamboat Mountain ACEC would be considered for expansion to include overlapping crucial big game habitats surrounding and adjacent to the Steamboat Mountain ACEC. The management actions for the expanded ACECs include restrictions on surface-disturbing activities and other land uses, such as, limitations on oil and gas, coal and sodium exploration and development activities, geophysical exploration, right-of-way construction, and off-road vehicular travel. Portions of these ACECs may be closed to future locatable mineral exploration and

development, subject to valid existing rights. The level of these various kinds of restrictions and types of land uses affected would be different in each expanded area.

There are seven WSAs within the planning area: Oregon Buttes, Honeycomb Buttes, Greater Sand Dunes, Buffalo Hump, Whitehorse Creek, South Pinnacles, and Alkali Draw WSAs. Management of these WSAs has been addressed in other Wilderness EIS documents, therefore, wilderness management is not addressed in the JMHCAP EIS. When Congress makes decisions on the designation of Wilderness areas in the Jack Morrow Hills planning area, those decisions will be incorporated into the CAP and the Green River RMP and, if necessary, the RMP would be amended accordingly. Until Congress acts, the WSAs will be managed under the Wilderness Interim Management Policy.

Copies of the draft EIS for the JMHCAP are available in the Rock Springs Field Office at the above address, the Bureau of Land Management, Lander Field Office, 1335 Main Street, Lander, Wyoming 82520, and the Bureau of Land Management Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009. Anyone wishing to be placed on the mailing list for the Jack Morrow Hills Coordinated Activity Plan effort should contact the Rock Springs Field Office at the above address.

Dated: June 22, 2000.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 00–16440 Filed 6–29–00; 8:45 am]

BILLING CODE 4320–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–170–00–1060–JJ]

Public Hearing and Intent To Remove Wild Horses

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice, public hearing and intent to remove wild horses.

SUMMARY: A public meeting is scheduled for July 14, 2000, at the Norwood Log Cabin located at 1120 Lucerne, Norwood, Colorado from 12 noon until 4 p.m. A formal hearing will be conducted to receive statements from the public concerning the use of helicopters and motor vehicles in wild horse management operations within the Spring Creek Basin Wild Horse Herd Management Area (HMA), Colorado for calendar years 2000 and 2001 starting promptly at 2 p.m. Prior to the hearing, general management and planned removal operations for the HMA will be discussed. Periodic removals are necessary in order to maintain the populations within the appropriate management levels (AMLs) established through the planning process as a result of monitoring and analysis of that data in accordance with the National Environmental Policy Act and BLM Policies. This document serves as a Notice of Intent to remove excess wild horses from the Spring Creek Basin HMA.

DATES: July 14, 2000.

LOCATION: Norwood Log Cabin, 1120 Lucerne, Norwood, Colorado.

TIME: The public meeting will begin at 12 noon and end at 2 p.m. The public hearing will begin at 2 p.m. and end at 4 p.m.

FOR FURTHER INFORMATION CONTACT: Gary Thrash, San Juan Field Office, 15 Burnett Court, Durango, Colorado, 81301 (970.385.1371); or Wayne Werkmeister, San Juan Field Office, P.O. Box 210, Dolores, Colorado 81323 (970.882.6828).

SUPPLEMENTARY INFORMATION: The meeting will begin at 12 noon and is open to the public. Interested persons may make oral statements on the subject of helicopter use during the formal hearing. All statements will be recorded. The meeting agenda will include an introduction and opening remarks, a public comment period on the removal plan, and a formal hearing on the use of helicopters during the removal.

Dated: June 22, 2000.

Wayne Werkmeister,

Wild Horse & Burro Specialist.

[FR Doc. 00–16282 Filed 6–29–00; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–929–00–1910–HE–4677–UT940]

Montana: Filing of Amended Protraction Diagram Plats

AGENCY: Bureau of Land Management, Monatana State Office, Interior.

ACTION: Notice.

SUMMARY: The plats of the amended protraction diagrams accepted June 9, 2000, of the following described lands are scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

Tps. 9 and 10 N., Rs. 15, 16, and 17 W.

The plat, representing the Amended Protraction Diagram 19 Index of unsurveyed Townships 9 and 10 North, Ranges 15, 16, and 17 West, Principal Meridian, Montana, was accepted June 9, 2000.

T. 9 N., R. 15 W.

The plat, representing Amended Protraction Diagram 19 of unsurveyed Township 9 North, Range 15 West, Principal Meridian, Montana, was accepted June 9, 2000.

T. 9 N., R. 16 W.

The plat, representing Amended Protraction Diagram 19 of unsurveyed Township 9 North, Range 16 West, Principal Meridian, Montana, was accepted June 9, 2000.

T. 9 N., R. 17 W.

The plat, representing Amended Protraction Diagram 19 of unsurveyed Township 9 North, Range 17 West, Principal Meridian, Montana, was accepted June 9, 2000.

T. 10 N., R. 15 W.

The plat, representing Amended Protraction Diagram 19 of unsurveyed Township 10 North, Range 15 West, Principal Meridian, Montana, was accepted June 9, 2000.

T. 10 N., R. 17 W.

The plat, representing Amended Protraction Diagram 19 of unsurveyed Township 10 North, Range 17 West, Principal Meridian, Montana, was accepted June 9, 2000.

The plat, representing the Amended Protraction Diagram 22 Index of unsurveyed Townships 14, 15, and 16 North, Ranges 27, 28, and 29 West, Principal Meridian, Montana, was accepted June 9, 2000.

T. 14 N., R. 27 W.

The plat, representing Amended Protraction Diagram 22 of unsurveyed Township 14 North, Range 27 West, Principal Meridian, Montana, was accepted June 9, 2000.

T. 15 N., R. 27 W.

The plat, representing Amended Protraction Diagram 22 of unsurveyed Township 15 North, Range 27 West, Principal Meridian, Montana, was accepted June 9, 2000.

T. 16 N., R. 27 W.

The plat, representing Amended Protraction Diagram 22 of unsurveyed Township 16 North, Range 27 West, Principal Meridian, Montana, was accepted June 9, 2000.

T. 15 N., R. 28 W.

The plat, representing Amended Protraction Diagram 22 of unsurveyed Township 15 North, Range 28 West, Principal Meridian, Montana, was accepted June 9, 2000.

T. 16 N., R. 28 W.

The plat, representing Amended Protraction Diagram 22 of unsurveyed Township 16 North, Range 28 West,

Principal Meridian, Montana, was accepted June 9, 2000.

T. 16 N., R. 29 W.

The plat, representing Amended Protraction Diagram 22 of unsurveyed Township 16 North, Range 29 West, Principal Meridian, Montana, was accepted June 9, 2000.

The amended protraction diagrams were prepared at the request of the U.S. Forest Service to accommodate Revision of Primary Base Quadrangle Maps for the Geometronics Service Center.

A copy of the preceding described plats of the amended protraction diagrams accepted June 9, 2000, will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against these amended protraction diagrams, accepted June 9, 2000, as shown on these plats, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protests.

These particular plats of the amended protraction diagrams 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, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: June 20, 2000.

Mark D. Dixon,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 00–16603 Filed 6–29–00; 8:45 am]

BILLING CODE 4310–DN–$$

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–ET; COC–61608]

Public Land Order No. 7455; Withdrawal of Public Land for the Saguache Smelter Site, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 60 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the Saguache Smelter Site. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

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 land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United Stated mining laws (30 U.S.C. Ch. 2, (1994)), but not from leasing under the mineral leasing laws, for the Bureau of Land Management to protect the Saguache Smelter Site:

New Mexico Principal Meridian

T. 45 N., R. 7 E.,
Sec. 26, S½S½S½SE¼;
Sec. 35, N½N½NE¼.

The area described contains 60 acres in Saguache County.

2. 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 the mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 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: June 7, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–16602 Filed 6–29–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA210–00–1610–01–2410]

Public Land and Resources; Planning, Programming and Budgeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of comment period for draft land use planning manual and handbook.

SUMMARY: The Bureau of Land Management (BLM) is developing a new manual and handbook for preparing land use plans and is extending by 30 days the time period for the public to review the proposed guidance and provide comments.

DATES: Send your comments on the draft land use planning manual and handbook to reach BLM by August 9, 2000.

ADDRESSES: Mail your comments to the Bureau of Land Management (WO–210), Attention: Ted Milesnick, 1849 C Street NW., (LS–1050), Washington, DC, 20240–0001 or send them electronically to *wo210.blm.gov*.

Copies of the draft land use planning manual and handbook may be obtained from any of the following sources: the Internet at *www.blm.gov;* the BLM Washington Office (U.S. Department of the Interior, BLM, Planning, Assessment and Community Support Group (WO–210), 1849 C Street, NW., (LS–1050), Washington, DC. 20240–0001); or from any BLM State Office or Field Office.

FOR FURTHER INFORMATION CONTACT: Ted Milesnick at (202) 452–7727, Ann Aldrich at (202) 452–7722, or Paul Politzer at (202) 452–0349.

SUPPLEMENTARY INFORMATION: The notice of availability and additional supplementary information for the Draft Land Use Planning Manual and Handbook were published in the **Federal Register** on May 30, 2000 (65 FR 34495), with a comment period expiring July 10, 2000. The BLM has received requests from the public to extend the comment period on the draft planning guidance. We recognize the value of public input on the draft guidance and therefore are extending the comment period for 30 days. We are limiting the extension to 30 days because of our desire to fully consider all comments and finalize the manual and handbook so that they can be used to guide the development of numerous planning efforts scheduled to begin October 1, 2000, the beginning of Fiscal Year 2001.

Dated: June 27, 2000.

Sherry Barnett,

Acting Assistant Director, Renewable Resources and Planning.

[FR Doc. 00–16659 Filed 6–29–00; 8:45 am]

BILLING CODE 4310–84–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–425]

In the Matter of Certain Amino Fluoro Ketone Compounds; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 12) issued by the presiding administrative law judge (''ALJ'') terminating the above-captioned investigation on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., Office of the General counsel, U.S. International Trade Commission, telephone 202–205–3096.

SUPPLEMENTARY INFORMATION: The Commission instituted this patent-based investigation on November 8, 1999, based on a complaint filed by Prototek, Inc., and Enzyme System Products, Inc., (''complainants''), both of California. Complainants alleged violations of section 337 of the Tariff Act of 1930 by reason of the importation and sale of certain amino fluoro ketone compounds that infringe claims 1–6 of U.S. Letters Patent 4,518,528, claim 1 of U.S. Letters Patent 5,210,272, and claim 1 of U.S. Letters Patent 5,344,939. The respondents were Bachem AG of Bubendorf, Switzerland, Bachem California, Inc. of Torrance, California, and Bachem Bioscience of King of Prussia, Pennsylvania.

On May 30, 2000, complainants and respondents filed a joint motion (Motion Docket No. 425–2) to terminate the investigation on the basis of a proposed consent order. The Commission investigative attorney supported the motion. On June 7, 2000, the ALJ issued the subject ID granting the joint motion to terminate the investigation on the basis of the proposed consent order. No petitions for review of the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and rule 210.42 of the Commission's Rules of Practice and Procedure (19 CFR § 210.42).

Copies of the public version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http//www.usitc.gov*).

Issued: June 26, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–16593 Filed 6–29–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–71]

Crabmeat From Swimming Crabs

AGENCY: United States International Trade Commission.

ACTION: Amendment of scope of the investigation to exclude shelf-stable crabmeat.

SUMMARY: At the request of petitioners in the investigation, the Commission amended the scope of investigation No. TA–201–71, Crabmeat from Swimming Crabs, to exclude shelf-stable crabmeat. Shelf-stable crabmeat is defined as crabmeat that is packed in airtight containers and is produced using additives and a thermal manufacturing process so that it requires no refrigeration. The Commission's notice of institution of the investigation was published in the **Federal Register** of March 20, 2000 (65 FR 15008).

EFFECTIVE DATE: June 23, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Issued: June 26, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–16592 Filed 6–29–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–427]

In the Matter of Certain Downhole Well Data Recorders and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') granting a joint motion to terminate the above-captioned investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3152.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 1, 2000, based on a complaint by Petroleum Reservoir Data, Inc. (''Petredat'') alleging that respondents Halliburton Company (''Halliburton'') and Spartek Systems (''Spartek'') violated section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, by importing, selling for importation, or selling within the United States after importation certain downhole well data recorders and components thereof that infringe certain claims of U.S. Letters Patent 5,130,705.

On March 23, 2000, Petredat, Halliburton, and Spartek entered into a settlement agreement, which included an agreement to file a joint motion to terminate the Commission investigation. On May 19, 2000, complainant Petredat and respondents Halliburton and Spartek filed the joint motion to terminate the investigation, which motion was supported by the Commission investigative attorney.

On May 30, 2000, the presiding ALJ issued an ID (Order No. 8) granting the motion to terminate the investigation on the basis of the settlement agreement. None of the parties filed a petition to review the subject ID. The Commission subsequently determined not to review the subject ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, and Commission rule 210.42, 19 CFR

§ 210.42. Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

By order of the Commission
Issued: June 26, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–16591 Filed 6–29–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 U.S.C. § 50.7, and in accordance with section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), notice is hereby given that a proposed Consent Decree in *United States* v. *Browning-Ferris Industries Chemical Services, Inc., et al.,* (''Settling Defendants''), Civil Action No. *1:00 CV–386,* was lodged on June 12, 2000, with the United States District Court for the Eastern District of Texas.

In this action the United States and the State of Texas, pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. § 9607, sought natural resource damages, including assessment costs, related to releases of hazardous substances from the Bailey Waste Disposal Site (''Bailey Site''), located in Orange County, Bridge City, Texas. The Consent Decree provides that the Settling Defendants will pay the United States and the State of Texas $605,000.00 dollars for natural resource damages, including assessment costs, related to the release of hazardous substances from the Bailey Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, P.O. Box 7611, United States Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States* v. *Browning-Ferris Industries Chemical Services, Inc., et al.,* DOJ Ref. #90–11–2–390/1.

The proposed Consent Decree May be examined at the office of the United States Attorney, Eastern District of Texas, 350 Magnolia Street, Suite 150, Beaumont, Texas 77701; the Region VI Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, United States Department of Justice, Washington, D.C. 20044–7611. In requesting a copy please refer to the referenced case and enclose a check in the amount of *$9.75* (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–16604 Filed 6–29–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on June 20, 2000, a proposed Consent Decree in *United States* v. *Fleetwood Industries, Inc., et al.,* Civil Action No. 00–CV–1818, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action the United States sought the reimbursement of response costs in connection with the Berks Landfill Superfund Site in Spring Township, Pennsylvania (''the Site'') pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.* The Consent Decree resolves the United States' claims against Hub Fabricating Company and Kachel Motors, Inc. for response costs incurred as a result of the release or threatened release of hazardous substances at the Site. These parties will pay the Untied States $7,760.67.

The Department of Justice will receive for a period of thirty (d) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States* v. *Fleetwood Industries, Inc., et al.,* D.J. Ref. 90–11–2–1347.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, Pennsylvania 19106, or at the Region 3 Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103. A copy of the Consent Decree may also be obtained by mail by requesting a copy from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $7.25 (29 pages at 25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–16585 Filed 6–29–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR. 50.7, notice is hereby given that on June 12, 2000, a proposed consent decree in the *United States* v. *City of New York, et al.* Civil Action No. 99 Civ. 2207 (LAK) was lodged with the United States District Court for the Southern District of New York.

The proposed consent decree resolves the United States' claims against the City of New York and the New York City Department of Sanitation (collectively ''defendants'') for violations of Section 608 of the Clean Air Act, 42 U.S.C. § 7671(g) and its implementing regulations set forth at 40 CFR Part 82, Subpart F, and a Compliance Order issued by the United States Environmental Protection Agency, by disposing of appliance collected from city residents in a manner that released substances that deplete the stratospheric ozone layer. Under the terms of the proposed consent decree, defendants will pay a civil penalty of $1,000,000.00 to the United States, and perform Supplemental Environmental Projects worth $3,000,000.00 that will improve the air quality of New York City.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments

relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, P.O. Box 7611, and should refer to *United States* v. *City of New York, et al.,* DOJ Ref. No. 90–5–2–106471.

The proposed consent decree may be examined at the Office of the United States Attorney for the Southern District of New York, and at the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York, 10007. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check payable to the Consent Decree Library in the amount of $5.25 (25 cents per page reproduction costs).

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–16605 Filed 6–29–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Technology Institute (''ATI''): Forging Defense Manufacturing Consortium (''FDMC'')

Notice is hereby given that, on April 10, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Advanced Technology Institute (''ATI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plantiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are The Advanced Technology Institute, North Charleston, SC; and The Forging Industry Association, Cleveland, OH. The nature and objectives of the venture are to plan, prioritize and implement key research and development initiatives that will provide increased technology and market development within the manufacturing sector and increased US competitiveness in the global marketplace.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–16607 Filed 6–29–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Warheads and Energetics Consortium (''NWEC'')

Notice is hereby given that, on May 2, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* (''the Act''), National Warheads and Energetics Consortium (''NWEC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Advanced Technology & Research Corporation, Burtonsville, MD; Aerojet-General Corporation, Sacramento, CA; Allied Signal Federal Manufacturing & Technologies, Kansas City, MO; Armtec Defense Products Company, Coachella, CA; Alliant Missile Products Co LLC, Hopkins, MN; American Ordnance LLC, Iowa Army Ammunition Plant, Middletown, IA; Applied Ordnance Technology, Inc., Waldorf, MD; Business Plus Corporation, Denville, NJ; Battelle, Columbus, OH; Bulova Technologies LLC, Lancaster, PA; CFD Research Corporation, Huntsville, AL; Combustion Propulsion and Ballistic Technology Corporation, State College, PA; Climax Molybedenum Corp., Tempe, AZ; DE Technologies, Inc., King of Prussia, PA; Day & Zimmerman, Inc., Philadelphia, PA; Eaton Associates, LaPorte, IN; Energetic Materials Research and Testing Center, Socorro, NM; Ensign-Bickford Company, Simsbury, CT; Enig Associates, Inc., Silver Spring, MD; Flurochem Inc., Azusa, CA; GEO–CENTERS, Inc., Newton Centre, MA; General Dynamics Armament Systems, Burlington, VT; General Sciences, Inc., Souderton, PA; Highly Filled Materials Institute, Stevens Institute of Technology, Hoboken, NJ; KVA Advanced Technologies, Inc., Carson City, NV; Loki Inc., Rolla, MO; Marconi Aerospace Defense Systems, Inc., Austin, TX; Material Processing & Research, Inc., Hoboken, NJ; M. Bruns Corporation, Alexandria, VA; Mitretek Systems, Inc., McLean, VA; New Jersey Institute of Technology, Newark, NJ; University of Maryland, Department of Mechanical Engineering, College Park, MD; Powdermet, Inc., Sun Valley, CA; Primex Technologies, Inc., St. Petersburg, FL; The Pennsylvania State Univ., Office of Sponsored Programs, University Park, PA; Quantic Industries, Inc., San Carlos, CA; Raytheon Systems Company, Tewksbury, MA; RTF Industries, Marshall, TX; SRI International, Menlo Park, CA; STREASAU Laboratory Inc., Spooner, WI; Talley Defense Systems, Inc., Mesa, AZ; Tanner Research, Inc., Pasadena, CA; Textron Systems Corp., Wilmington, MA; Thermo Power Corp., Waltham, MA; Thiokol Propulsion Group, Brigham City, UT; University of Denver (Colorado Seminary), Denver, CO; Office of Research Services, Rolla, MO; United Defense, LP, Armament Services Division, Minneapolis, MN; and Vertay Technology, Inc., East Amherst, NY. The nature and objectives of the venture are to conduct research and development activities in the area of warheads and energetics technology; to enter into a Section 845 ''Other Transactions'' Agreement with the US Army for the funding of certain research and development to be conducted, in partnership with the Army and other NWEC Members, for the US Army Warheads and Energetics Technology Center (''WETC'') in the area of warheads and energetics technology; to develop, maintain, and execute a flexible multi-year master research plan in the area of warheads and energetics technology that clearly defines performance goals and maximizes the collective capabilities toward attainment of sound technical solutions consistent with these goals; to provide a unified and coordinated message to the U.S. Government's legislative branch and the Department of Defense community as to the strategically important role warheads and energetics technologies will play in current and future weapons systems development; and to define programs and obtain programs and obtain program funding that is focused on the development, demonstration and transition of key technologies that will result in current

weapons system improvements or the fielding of new systems.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–16606 Filed 6–29–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on April 18, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specific circumstances. Specifically, Adaptive Silicon, Inc., Los Gatos, CA; Analog Devices, Inc., Greensboro, NC; C Level Design, San Jose, CA; Chronology Corp., Redmond, WA; Circuti Semantics, Inc., San Jose, CA; Experience First, Inc., San Jose, CA; Dominique Houzet (individual member), Toulouse, France; Improv Systems, Inc., Santa Clara, CA; Jennic Ltd., Sheffield, United Kingdom; KITAL–Korean Institute of Technology and the Law, Seoul, Republic of Korea; MAGIMA, Inc., Monterey Park, CA; J. Sukarno Mertoguno (individual member), San Jose, CA; Pittsburgh Digital Greenhouse, Inc., Pittsburgh, PA; Wolfram Putzke-Roming (individual member), Oldenburg, Germany; Silicon Automation Systems Limited, Bangalore, India; Simulation Magic, Inc., Campbell, CA; SIP Consortium in Taiwan, Taiwan; Universite Pierre et Marie Curie, Paris, France; and Mason Weems (individual member), Austin, TX have been added as parties to this venture. Also, ASIC Alliance Corp., Woburn, MA; ASPEC, Sunnyvale, CA; Boulder Creek Corp., Santa Cruz, CA; Cirrus Logic, Inc., Fremont, CA; Gigalex Co., Ltd., Osaka, Japan; ICL High Performance Systems, Manchester, United Kingdom; Innovative Semi, Mountain View, CA; Integrated Technoloyg Express, USA, Santa Clara, CA; iReady Corporation, Santa Clara, CA; Isotron Corp. (formerly Desideratum Company), Seattle, WA; Kawasaki Steel Corp., Chiba, Japan; LEDA S.A., Meylan, France; LEDA Systems, Inc., Plano, TX; Neo Linear, Inc., Pittsburgh, PA; NKK Corp., Kanagawa, Japan; Real 3D, Orlando, FL; ROHM Co., Ltd., Kyoto, Japan; Silicon Systems Limited, Dublin, Ireland; Smartech Oy, Tampere, Finland; SynTest Technologies, Inc., Sunnyvale, CA; TAEUS, Colorado Springs, CO; and Tundra Semiconductor Corp., Kanata, Ontario, Canada have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on January 27, 2000. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–16608 Filed 6–29–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Implementation of Section 104 of the Communications Assistance for Law Enforcement Act: Capacity Requirements for Paging (Traditional, Advanced Messaging, and Ancillary Services), Mobile Satellite System, and Analog and Digital Specialized Mobile Radio

AGENCY: Federal Bureau of Investigation, DOJ.

ACTION: Further notice of inquiry.

SUMMARY: The Communications Assistance for Law Enforcement Act (CALEA) mandates that the Attorney General provide capacity requirements for the actual and maximum number of interceptions (of both call content and call-identifying information) that telecommunications carriers may be required to accommodate in support of law enforcement's electronic surveillance needs. On December 15, 1998, the Federal Bureau of Investigation (FBI) released a Notice of Inquiry (NOI) entitled ''Capacity Requirements for Telecommunications Services Other Than Local Exchange Services, Cellular Services, and Broadband PCS'' (63 FR 70160, December 18, 1998) to obtain public comment on the FBI's efforts to establish law enforcement's capacity requirements for services other than local exchange services, cellular, and broadband personal communications services (PCS). The FBI received comments from numerous telecommunications carriers and telecommunications industry associations. After careful consideration of the record, the FBI has decided to use this Further Notice of Inquiry (FNOI) to seek additional input on the various issues related to establishing a Notice of Capacity for only the following telecommunications services at this time: paging (including traditional (one-way paging), advanced messaging (*e.g.,* two-way paging and roaming), and ancillary services), mobile satellite system (MSS), and analog specialized mobile radio (SMR) and digital SMR (*e.g.,* enhanced specialized mobile radio (ESMR)).

DATES: Comments must be received on or before August 29, 2000.

ADDRESSES: Comments should be submitted to the Federal Bureau of Investigation, CALEA Implementation Section, Attention: Further Notice of Inquiry, 14800 Conference Center Drive, Suite 300, Chantilly, VA 20151.

FOR FURTHER INFORMATION CONTACT: Program Manager for Capacity, CALEA Implementation Section, 703–814–4836 or 800–551–0336.

SUPPLEMENTARY INFORMATION:

I. Background

A. Capacity Notice Mandate

The Communications Assistance for Law Enforcement Act (CALEA) became law on October 25, 1994.[1] It was enacted to preserve law enforcement's ability to access call content and call-identifying information, pursuant to lawful authorization, notwithstanding technological advances in the provision of communications services. Section 104(a)(1) of CALEA outlines the procedure by which the Attorney General is obligated to publish notices of the actual and maximum capacity requirements for simultaneous electronic surveillance. After ''notice and comment'' and ''consulting with State and local law enforcement agencies, telecommunications carriers, providers of telecommunications support services, and manufacturers of telecommunications equipment,'' the

[1] Pub. L. 103–414, 108 Stat. 4279 (1994) (Title I codified at 47 U.S.C. 1001–1010).

Attorney General is required to publish in the **Federal Register** notice of the estimated actual and maximum capacity requirements needed to accommodate the electronic surveillance that government agencies may conduct and use simultaneously.

This FNOI is part of the rulemaking process initiated pursuant to section 104 of CALEA. On March 3, 1995, the Attorney General delegated to the Director of the FBI, or his designee(s), the authority to carry out the responsibilities conferred upon the Attorney General pursuant to section 104 of CALEA. The FBI is implementing CALEA on behalf of all federal, state, and local law enforcement agencies.

B. Final Notice of Capacity and Notice of Inquiry

The FBI began the process of implementing sec. 104 by publishing a Final Notice of Capacity in the **Federal Register** on March 12, 1998 (63 FR 12218). The Final Notice of Capacity adopted capacity requirements for three telecommunications services that law enforcement viewed as its highest priorities for implementing lawfully-authorized interceptions. Specifically, the Final Notice of Capacity adopted actual and maximum capacity requirements for local exchange services, cellular service, and broadband PCS. The Final Notice of Capacity stated explicitly that other telecommunications services besides local exchange, cellular, and broadband PCS would be addressed in future Notices of Capacity.

As a continuation of the capacity process, the NOI published in December 1998 provided commenters with an opportunity to provide input to the FBI as it develops law enforcement's capacity requirements for telecommunications services other than local exchange, cellular, and broadband PCS.

C. Rationale for This FNOI

Both the Final Notice of Capacity and the NOI discussed the FBI's intent to establish capacity requirements for all telecommunications services.[2] This FNOI represents the next step in the process of issuing Notices of Capacity for all telecommunications services. In response to the NOI, however, a few commenters questioned the appropriateness and timeliness of proceeding with establishing capacity requirements in light of the Federal Communications Commission's (FCC) continuing CALEA implementation and the ongoing lawsuit in federal court. In the interim, the FCC has issued decisions regarding CALEA that were pending when parties filed their comments to the NOI.[3]

This FNOI makes appropriate reference to the relevant portions of these FCC decisions insofar as they affect this Notice of Capacity proceeding. With respect to the ongoing litigation,[4] the lawsuit is directed specifically at the conclusions reached in the Final Notice of Capacity concerning local exchange service, cellular service, and broadband PCS. Thus, the lawsuit does not affect the FBI's duty under CALEA to establish capacity requirements for any remaining telecommunications services. Consequently, the FBI invites commenters to provide further input on the appropriate methodologies for setting capacity requirements for paging, Mobile Satellite System (MSS), and Specialized Mobile Radio (SMR) services.

A few commenters on the NOI have asserted that the FBI is precluded from establishing any capacity requirements because the statutory deadline has passed. The FBI finds this assertion to be unpersuasive for a number of reasons. First, despite section 104(a)(1)'s requirement that the Attorney General publish capacity notices within one year after CALEA's date of enactment, the plain statutory language of section 104(b) clearly anticipates that this time limit might not be met. Specifically, section 104(b) gives telecommunications carriers up to three years to comply with any capacity notice published by the government. Second, consistent with the plain statutory language, the legislative history of CALEA explicitly supports the position that the section 104(a)(1) time limit does not deprive the Attorney General of her authority to issue capacity notices. The legislative history clearly states, ''In the event the Attorney General publishes the notices *after* the statutory time limit, carriers will have three years thereafter to comply, which time period will fall after the effective date of section (103).''[5] Third, there is a substantial body of federal case law which holds that the failure of an agency to observe a procedural requirement does not void subsequent agency action.[6] Guided by this precedent, the legislative history, and the plain statutory language, the FBI will continue the process of establishing capacity requirements as mandated by CALEA.

Finally, some commenters contend that the FBI must first demonstrate a capacity need with respect to each telecommunications service before it can establish capacity requirements for that service. CALEA does not require the FBI to conclusively demonstrate its capacity needs with respect to a particular telecommunications service. Rather, section 104(a) allows the Attorney General to estimate actual and maximum capacity requirements which may be based upon such considerations as the type of equipment, type of service, number of subscribers, type or size of carrier, nature of service area, or any other measure, provided that the capacity requirements are identified, to

[2] Final Notice of Capacity, 63 FR 12220 (''Capacity notices will eventually be issued covering all telecommunications carriers.''); Implementation of section 104 of the Communications Assistance for Law Enforcement Act: Telecommunications Services Other than Local Exchange Services, Cellular, and Broadband PCS, Notice of Inquiry, 63 FR 70160, 70161 (1998) (NOI) (''Exclusion from the March 12, 1998 Final Notice of Capacity of other telecommunications carriers * * * does not exempt them from the statutory obligations of CALEA.''); *see also* Implementation of section 104 of the Communications Assistance for Law Enforcement Act, Second Notice and Request for Comments, 62 FR 1902, 1904 (1997).

[3] Communications Assistance for Law Enforcement, Second Report and Order, CC Docket No. 97–213 (rel. Aug. 31, 1999) (Second Report and Order); Communications Assistance for Law Enforcement, Third Report and Order, CC Docket No. 97–213 (rel. Aug. 31, 1999).

[4] *United States Telecom Ass'n* v. *F.B.I.,* No. 1:98CV02010 (D.D.C. filed August 19, 1998). On December 13, 1999, the Cellular Telecommunications Industry Association, the Personal Communications Industry Association, and the Telecommunications Industry Association filed a joint motion to withdraw without prejudice from the pending lawsuit. The joint motion was granted by the court on that same date. The United States Telecom Association is the only remaining plaintiff in the pending capacity litigation.

[5] H.R. Rep. No. 103–827, pt. 1, at 25 (1994).

[6] *See Brock* v. *Pierce County*, 476 U.S. 253 (1986) (failure of agency to observe procedural requirement represented by the word ''shall'' was not enough to remove the Secretary's power to act after 120 days and does not void subsequent agency action, especially when important public rights are at stake); *see also William G. Tadlock Constr.* v. *United States Department of Defense*, 91 F.3d 1335, 1341 (9th Cir. 1996) (failure to follow statutory deadlines does not deprive the agency of jurisdiction); *Idaho Farm Bureau Fed'n* v. *Babbitt*, 58 F.3d 1392, 1395 (9th Cir. 1995) (requirement that Secretary ''shall'' publish proposed addition to the list of endangered species within one year does not proscribe listing a species as endangered after the statutory time limit had passed); *Gottlieb* v. *Pepa*, 41 F.3d 730, 731 (D.C. Cir. 1994) (language instructing that Secretary of Transportation ''shall'' ensure final action on correction applications is taken within 10 months of receipt is directory rather than mandatory); *National Cable Television Ass'n.* v. *Copyright Royalty Tribunal,* 724 F.2d 176, 189, n.23 (D.C. Cir. 1983) (requirement tribunal ''shall'' render a decision within one year does not make a later decision void); *Marshall* v. *N. L. Indus.*, 618 F.2d 1220, 1224–1225 (7th Cir. 1980) (failure to meet requirement that Secretary of Labor ''shall'' make determination on employee's complaint within 90 days does not bar subsequent enforcement action); *Marshall* v. *Local Union 1374 Int'l Ass'n of Machinists & Aerospace Workers*, 558 F.2d 1354 (9th Cir. 1977) (requirement that Secretary of Labor ''shall'' bring suit within 60 days of receiving complaint does not bar later suit).

the maximum extent practicable, with a specific geographic location. Thus, the statute permits the Attorney General to estimate reasonable actual and maximum capacity requirements despite the absence of historical intercept data or a demonstrated need with respect to a particular telecommunications service.

II. Establishing Notice of Capacity Requirements for Paging, MSS, and SMR Services

A. Scope of this FNOI

The FBI notes the numerous helpful comments that it received on the initial NOI, all of which it carefully considered. However, the comments received did not provide complete information about some of the matters that the FBI put forth for discussion. Also, the comments have raised additional issues that the FBI believes are worthy of further public discussion. The FBI is publishing this FNOI in order to obtain additional information so that it can avoid setting capacity requirements too low (which would impair the effectiveness of CALEA) or too high (which would place an unnecessary burden on industry.)

In the NOI, the FBI sought comment on ways in which capacity requirements could be established for telecommunications services other than local exchange, cellular, and broadband PCS. The NOI encouraged all carriers that offer telecommunications services that were not covered by the Final Notice of Capacity to comment on the issues raised in the NOI. To facilitate the dialogue, the NOI set forth the following list of eleven services that had not been addressed in the Final Notice of Capacity: traditional paging, advanced messaging, ancillary services, MSS, SMR and ESMR, national and multi-rate services, ATM, X.25, frame relay, airplane telephony, and railroad telephony.

After careful consideration of the record, the FBI has decided to use this FNOI to seek additional input on the various issues related to establishing a Notice of Capacity for only the following telecommunications services at this time: Paging (including traditional (one-way paging), advanced messaging (*e.g.,* two-way paging and roaming), and ancillary services), MSS, and analog and digital SMR services. At present, it is the FBI's priority to ensure that providers of these types of telecommunications services can provide law enforcement with the technical capacity to carry out lawfully-authorized electronic surveillance. As stated in the Final Notice of Capacity, the FBI will eventually publish Notices of Capacity for all telecommunications services covered by CALEA.

B. Services Covered by This Notice of Capacity Proceeding

1. Paging Services

The term ''paging services'' is used throughout this FNOI to describe the three most common types of paging and messaging services: traditional one-way paging, advanced messaging services, and ancillary services. Traditional one-way paging refers to a category of service offerings that include tone-only, tone plus voice, numeric display, alphanumeric display, and voice message options. Advanced messaging services allow additional features including two-way communications between radio transceiving devices and roaming. Many of these services are sometimes referred to as narrowband PCS. Ancillary services are connectivity-related, real-time voice services. Ancillary services resemble telephony services. For example, ''caller/subscriber bridging'' allows a caller to speak to the subscriber through the paging terminal or the paging messaging switch, which answers calls, places the caller on hold, pages the subscriber, and then connects the held calling party to the subscriber. Two other services often included are outdial and one-number service.

Paging services are widely deployed throughout the United States and, generally, have been available longer than MSS and SMR services. Paging is one of the most universally available services and the industry continues to enjoy high subscribership growth rates.

Law enforcement officials have found that the flexible, mobile nature of the various paging services makes these services attractive to criminals, especially to groups engaged in organized criminal activities. Paging services have traditionally been a major intercept target for law enforcement.

2. MSS Services

MSSs are satellite systems capable of providing voice and data services to end-users via small, handheld or portable mobile receiving terminals using constellations of low earth orbit (LEO) or middle earth orbit satellites. Additionally, some satellite service systems contain fixed satellite service elements, such as satellite-based payphones and desk-top telephones, even though they are commonly referred to as ''mobile'' satellite services.

MSSs provide a wide range of services, including voice, data, video, paging, and messaging. Also, some MSS carriers have dual-mode user terminals that permit users to switch between terrestrial cellular service and MSS service. In this FNOI, the term MSS is meant to include those satellite entities that provide the transmission or switching of telecommunications services through intersatellite links or earth stations/gateways regardless of whether the receiving and sending terminals are mobile or fixed. The MSS service subscribership rates have the potential to increase significantly from current levels within the next few years.

3. SMR Services

The NOI referred to the terms ''SMR and ESMR.'' ''ESMR'' is a term used generally to refer to digital SMR service offerings. Relevant FCC regulations (47 CFR part 20 and part 90) use the term ''SMR,'' to include analog SMR and digital SMR. In this FNOI, the FBI adopts the FCC's terminology with respect to SMR services.

The most important distinction for SMR services in regard to CALEA compliancy is the difference in the definitions of commercial mobile radio service (CMRS) and private mobile radio service (PMRS). In its Second Report and Order, the FCC has held that CMRS providers are considered to be telecommunications carriers for the purposes of CALEA, but PMRS providers are not subject to CALEA unless they offer service that qualifies as CMRS. For purposes of CALEA, the key factor that separates CMRS from PMRS is interconnection to the public switched telephone network (PSTN); interconnected service is considered to be CMRS, which is subject to CALEA, whereas pure dispatch service with no interconnection is considered to be PMRS, which is not covered by CALEA.

SMR service is a commercial-based telecommunications service that uses either analog or digital technology between mobile radio units and base stations. SMR services are provided in different frequency bands.

The introduction of digital SMR services such as ''push-to-talk'' interconnected dispatch service has attracted a new group of subscribers, whose numbers will probably continue to grow. Like paging and MSS services, the mobile nature of SMR services makes them convenient for furthering criminal activity.

C. Possible Methodologies for Establishing Capacity Requirements

1. Basis of Notices

Section 104(a)(2)(A) of CALEA states that capacity notices ''may be based upon the type of equipment, type of

service, number of subscribers, type or size or [sic] carrier, nature of service area, or any other measure.'' Section 104(a)(2)(B) indicates that capacity notices ''shall identify, to the maximum extent practicable, the capacity required at specific geographic locations.'' The FBI has identified possible methods for calculating capacity requirements based on these principles, and requests commenters to provide input on them.

2. Historical Data in General

Commenters have correctly noted that there is little electronic surveillance history for many of the telecommunications services identified in the NOI. There are several contributing factors that explain this near absence of surveillance history. First, the lack of a technical electronic surveillance solution for some of these services essentially precludes law enforcement from even seeking court authorizations for surveillance. Second, many of these services are relatively new and have had little time to establish surveillance histories. Third, the recent and dramatic increase in subscribership rates for many of these telecommunications services has lead to a newfound interest on the part of law enforcement in these services. Despite these factors, some commenters have argued that it is premature for the FBI to develop capacity requirements at this time given the lack of historical electronic surveillance data on these particular telecommunications services. As stated previously, the lack of historical data for many of the telecommunications services listed in the NOI does not preclude the FBI from estimating reasonable actual and maximum capacity requirements for these services.

Similarly, some commenters have suggested basing actual capacity requirements on the number of intercepts recorded in the Wiretap Report filed annually with the Administrative Office of the United States Courts,[7] or one of the other reports[8] that list intercept activity. There is no report, however, that records all of the surveillances addressed by CALEA. Additionally, the surveillances that are reported in the Wiretap Report, as previously discussed in the Final Notice of Capacity, do not identify the actual number of lines for call content interceptions associated with each court order, nor the number of lines associated with the acquisition of call-identifying information interceptions (e.g., from pen registers and trap and trace devices) that have been performed by all law enforcement agencies. In addition, the Wiretap Report does not disaggregate the numbers of intercepts according to the specific type of service provided (e.g., traditional one-way paging, advanced messaging or ancillary services). The intercept activity recorded in the Wiretap Reports does not provide an accurate baseline for law enforcement to estimate its capacity needs. Further, most of the services covered by this FNOI are new technologies with limited intercept histories, but large potential intercept needs. Thus, for paging, MSS, and SMR services, the information contained in the Wiretap Reports is not a complete record of intercept activity.

3. Potential Methodologies for Setting Capacity Requirements for Paging Services

Commenters have raised several arguments in favor of setting distinct capacity requirements for traditional one-way paging; advanced messaging services; and ancillary services offered by paging service providers. The FBI finds some of these arguments persuasive. In addition, one commenter asserts that it is not necessary to establish a specific capacity requirement for traditional one-way paging because law enforcement typically uses a cloned pager to obtain call content or call-identifying information pursuant to a court order. Although law enforcement has used cloned pagers to implement surveillance orders in the past, a different intercept method may be used in the future. Moreover, the use of cloned pagers may not provide law enforcement with all of the information to which it might be entitled under a specific court order. Accordingly, the FBI will include traditional one-way paging service as one of the three categories of paging services when it establishes capacity requirements for these services.

a. Historical Data for Paging Intercepts. Unlike more recently deployed services such as MSS service, traditional one-way paging service has a significant history of law enforcement surveillance intercepts. As discussed above, however, the Wiretap Report is not a sufficient source of data upon which capacity requirements can be based.

b. Geographic Basis. Section 104 (a) (2) (B) of CALEA provides that notices of capacity ''shall identify, to the maximum extent practicable, the capacity required at specific geographic locations.'' Paging services seem to lend themselves to geographic classification because the FCC issues licenses for most paging services on a geographic basis. One commenter recommends that traditional one-way paging service be based on each provider's composite service area, rather than on a predefined geographic market basis. For advanced messaging and ancillary services, this commenter suggests basing capacity requirements on the Major Trading Area (MTA), unless a carrier can provide interface and processing capacity at one nationwide point on its network. The FBI seeks comment on the extent to which MTAs represent geographic areas that are appropriate for basing capacity requirements, and requests comments on any other geographic boundaries that should be considered.

c. Per Carrier Basis. One commenter suggests that capacity requirements for traditional one-way paging services should be applied to each paging service provider's operations nationwide, rather than in each geographic market served. Additionally, this commenter noted that providers of traditional one-way paging services provide service over vastly differing areas, and that no single geographic area can be used for determining the proper capacity requirement. Although the FBI's initial preference would be to establish capacity requirements that are tied to uniform geographic areas throughout the paging industry, comments are sought on the suggestion that capacity for traditional one-way paging service providers should be based on each carrier's service area.

d. Percentage of Subscribers. A commenter also recommends that the capacity requirements for paging service providers should be determined by application of a standardized percentage to the number of subscriber units the service provider serves, subject to certain limits. Under the approach advocated by this commenter, the percentage would be based on the historical incidence of paging intercepts, and would be calculated

[7] The Omnibus Crime Control and Safe Streets Act of 1968 requires the Administrative Office of the United States Courts to report to Congress in April of each year the number and nature of federal and state applications for orders authorizing or approving the interception of wire, oral, or electronic communications. 18 U.S.C. 2519(1).

[8] The Foreign Intelligence Surveillance Act requires the Attorney General to report annually to the Administrative Office of the United States Courts and to Congress the total number of applications made for orders and extensions of orders approving electronic surveillance and the total number of such orders and extensions either granted, modified, or denied. 50 U.S.C. § 1807. In addition, the Electronic Communications Privacy Act requires the Attorney General to report annually to Congress the number of orders for pen registers and trap and trace devices applied for by law enforcement agencies of the Department of Justice. 18 U.S.C. 3126.

separately for traditional one-way paging services, advanced messaging services, and ancillary services.

As discussed previously, the historical incidence of paging intercepts is of little utility because the Wiretap Report is not a sufficient source of data upon which capacity requirements can be based. Nonetheless, the FBI seeks comment on the general parameters of this commenter's proposal to base capacity requirements on a percentage of paging service providers' subscribers. The FBI seeks comment on the merits of this approach, specifically in terms of increasing a carrier's capacity requirements as its growth rate increases. Commenters may propose suggestions as to how the FBI could obtain up-to-date subscribership data from paging service providers. The FBI also seeks comment on how, under this proposed approach, paging service providers could be certain at all times that they are in compliance based on the number of end users they serve at any given time. One commenter favors this approach because it does not set fixed capacity requirements. But it is possible that basing capacity on a percentage of subscribers would provide less certainty to carriers for purposes of building their networks and planning for network expansion than would an approach that articulates capacity as a fixed number of intercepts. The FBI seeks comment on the merits and defects in this proposed approach.

e. Level of Subscribership. Another potential methodology would link capacity requirements to subscribership using a fixed capacity number, rather than a percentage, associated with ranges of increasing subscriber numbers. For example, actual and maximum capacity numbers would be set for paging service providers who serve, for example, between one and 500,000 subscribers in a specified geographic area. Higher capacity requirements would be established for companies who serve, for example, 500,000 to 1,000,000 subscribers within a geographic area. As a service provider's subscribership grows, capacity requirements would increase, but only to specific predefined limits. Capacity requirements would peak after a carrier reached a specific number of subscribers. This approach would achieve results similar to the proposed method involving percentages of subscribers, except that it arguably would provide paging service providers with more certainty regarding specific numbers of intercepts they would be required to accommodate on their networks. The FBI seeks comment on the potential of this approach. In addition, the FBI seeks comment on the appropriate ranges of numbers of subscribers that could be used, based on the smallest number of subscribers served by a carrier in the paging industry and the subscribership bases of the largest providers of paging services.

f. Additional Considerations. Commenters are requested to submit any additional considerations that should be factored into a methodology for establishing capacity requirements for paging service providers. For example, law enforcement's capacity needs are generally higher in traditionally high crime areas. Thus, the FBI seeks comment on how a methodology for developing capacity requirements for paging services can take into consideration the differences in criminal activity that take place in various parts of the country. The FBI seeks comment on any other methodologies that might be used to establish capacity requirements for paging service providers. Commenters are invited to provide details regarding any such proposal.

4. Potential Methodologies for Setting Capacity Requirements for MSS Services

At the outset, the FBI notes that MSS service providers, despite their nontraditional regulatory history,[9] are expressly included among the service providers listed in CALEA's legislative history.[10] The MSSs currently in existence or in their planning stages vary greatly in terms of their network architecture, business plans, and service offerings. To the extent that MSS service providers offer support services to their contracted or designated common carrier/reseller, MSS service providers are liable under section 106 of CALEA, which contains provisions for providers of telecommunications support services. To the extent that an MSS carrier/reseller enables a customer to originate, terminate, or direct communications, it is subject to CALEA requirements.[11]

Given the differences among MSSs, MSS service providers are requested to submit comments describing their unique circumstances. For example, some MSS service providers serve as space station licensees that only sell access to a designated or contracted carrier/reseller, who offers telecommunications services to the public. Additionally, some other MSS service providers may own their own earth station/gateway, and are directly involved in the transmission of communications to the public. The FCC noted in its Second Report and Order that a reseller's responsibility under CALEA is limited to its facilities. We read this to mean that an MSS reseller is not responsible for the CALEA obligations pertaining to the capacity of the MSS service provider's underlying facilities whose services it is reselling. The FBI seeks comment on how the MSS service provider will meet its obligation to comply with CALEA, and how the carrier/reseller that purchases access from the MSS service provider will comply with CALEA. In addition, the FBI requests that MSS service providers/space station licensees identify the carrier(s)/reseller(s) and any other entity that holds a gateway or earth station license for services that use the MSS space station. The FBI emphasizes the need, based upon the heterogeneous nature of the players in the MSS industry, for specific comment on these and other issues from each MSS service provider and each MSS carrier/reseller that serves, or plans to serve, the United States.

In response to the NOI, commenters suggested various methodologies that could be used to develop capacity requirements for MSS service providers and MSS carriers/resellers. Commenters are requested to supply detailed comments on these proposals as outlined below, and, in particular, to identify specific characteristics of MSS service providers and MSS carriers/resellers that should be taken into consideration as the FBI establishes capacity requirements for MSS service providers and carriers/resellers.

a. Historical Data for MSS Intercepts. Historical data concerning law enforcement's intercept activity can supply valuable insights into establishing capacity requirements with respect to some telecommunications services, such as local exchange service. The historical data for MSS is not helpful because MSS service is a relatively new service that has not yet been widely deployed.

In response to the NOI, commenters have expressed mixed opinions regarding the use of historical data as a foundation for establishing MSS capacity requirements. Some commenters support using historical

[9] For example, the FCC has determined that some MSS service providers are not common carriers. *See* Report and Order, CC Docket No. 92–76, FCC 93–478 (released Nov. 16, 1993) (Little LEO Report and Order); Report and Order, CC Docket No. 92–166, FCC 94–261 (rel. Oct. 14, 1994) (Big LEO Report and Order); and Report and Order, IB Docket No. 96–220 (rel. Oct. 15, 1997) (Little LEO Report and Order).

[10] *See* 140 Cong. Rec. H–10779 (daily ed. Oct. 7, 1994) (statement of Rep. Hyde); *see also* Second Report and Order at ¶ 10, n.25 (citing legislative history); ¶ 14.

[11] *See* Second Report and Order at ¶ 11, n.26 (citing legislative history).

data because it demonstrates the extremely low number of actual MSS intercept requests to date. These commenters assert that the low number of actual intercepts indicates that a low capacity requirement should be created. One commenter, however, points out the difficulties in using historical data on which to base MSS capacity requirements because of the lack of any comprehensive statistics for MSS interceptions. In addition, a few commenters point out that because MSS is so different from traditional wireless services, it is impossible to take historical data from terrestrial wireless intercepts and extrapolate MSS (non-terrestrial) capacity requirements.

Given the emerging nature of the MSS industry and its relatively low current subscribership numbers, it appears that a capacity methodology based on historical data is not appropriate for MSS services. The number of intercepts to date does not take into account the satellite industry's new market entrants or its potential market growth. At this point, increased subscribership to MSS would make capacity requirements based on existing historical intercept activity obsolete. The FBI requests commenters to provide input on this statement, and suggest any alternatives or supplementary information.

b. Geographic Basis/Per Gateway. In the Final Notice of Capacity, the capacity requirements for wireless carriers (i.e., cellular and broadband PCS) were based upon market service areas, in particular, Metropolitan Statistical Areas and Rural Statistical Areas for cellular, and Major Trading Areas and Basic Trading Areas for broadband PCS. As various commenters have pointed out, these specific geographical designations would be inappropriate to apply to MSS carriers because their earth gateways service vast territories. For example, some MSS carriers use two or three gateways to provide service to the entire United States. These same gateways can also provide service to Canada and Mexico.

Some commenters have also suggested that MSS capacity requirements be configured on a per-gateway basis. A significant concern with this approach is that the capacity notice will need to be modified whenever an MSS carrier installs or deploys a new gateway which provides service to the United States. Commenters are requested to take this concern into account when providing input on the practicality of this approach.

c. Per Carrier Basis. Some commenters stress that it would be difficult to create a standard capacity requirement for all MSS carriers and suggest establishing capacity requirements on a per-carrier basis. Unlike other types of telecommunications carriers, each MSS service provider has a network architecture and business plan that is distinct from other MSS service providers. Moreover, the MSS industry differs from other telecommunications providers in that a potentially large portion of the future market could be served by carriers that are currently in the planning stages and not yet offering service. The FBI seeks comment on which methodology might be applied to various carriers based on their unique characteristics.

d. Percentage of Subscribers. A methodology based on a percentage of an MSS carrier's subscribers, as discussed in detail above with respect to paging service providers, would result in capacity requirements that reflect a percentage of an MSS carrier's overall customer base. Under this approach, the capacity requirement for carriers that have low subscribership would be relatively low, but the requirement would increase—only up to a certain, pre-established point—as subscribership grows. This approach would require the FBI to have accurate, up-to-date subscribership data. The FBI seeks comment on the viability of basing capacity requirements for MSS carriers on a percentage of their subscribers. The FBI also seeks comment on whether there are existing sources of subscribership data that could be used to calculate capacity requirements, including whether MSS carriers publicly and routinely release the number of customers they serve.

e. Percentage of Engineered Capacity. The Initial Notice of Capacity, released in 1995, defines engineered capacity as ''the maximum number of subscribers that can be served by that equipment, facility, or services'' (60 FR 53643, 53645). A commenter proposes that MSS capacity requirements could be based on a percentage of engineered capacity. The same commenter stipulates, however, that a percentage of engineered capacity should be used only if it is applied to the current serving capacity of the gateway, as opposed to the capacity to which the gateway can be ultimately expanded. This commenter indicates that because MSS services will have a very small customer base initially, and therefore a small amount of available capacity, if the FBI requires a percentage based on all of a gateway's potential serving capacity, ''far too much capacity will be required at the initial deployment stage, imposing significant cost and technical constraints.'' Furthermore, some commenters suggest that if a percentage of engineered capacity approach is used, then the percentage should be set at the 0.05 percent actual and 0.25 percent maximum ''Category III requirements'' because MSS carriers primarily serve rural and remote areas.[12]

Using a percentage of engineered capacity methodology to establish capacity for MSS carriers offers a flexible approach, but might be difficult to implement. For example, after a percentage was established, an MSS carrier would be required to supply data on its equipment, facilities, and other network elements, and would have to submit periodic updates on any changes to these system components. In addition, because the architecture of each MSS carrier is unique, it may be difficult to establish a uniform percentage that all MSS carriers could accommodate. If this methodology were combined with a per-carrier approach, however, each capacity requirement could be specific to each MSS carrier.

The FBI seeks comment on the viability of using a percentage of engineered capacity as a means of establishing MSS capacity requirements. The FBI requests commenters to identify the equipment, facilities, and other network elements that would have to be examined in order to use this approach to determine capacity requirements.

5. Potential Methodologies for Setting Capacity Requirements for SMR Services

In its Second Report and Order, the FCC has concluded that all SMR services which are interconnected to the PSTN are subject to CALEA. Specifically, the FCC indicated that push-to-talk ''dispatch'' service is subject to CALEA to the extent it is offered in conjunction with interconnected service.

Commenters have suggested a variety of methodologies for establishing capacity requirements for SMR service providers. The methodologies proposed on the record, as well as additional

[12] In the Initial Notice of Capacity, a methodology was established that used geographic regions as a basis for configuring capacity requirements. The reasoning behind this approach was that densely populated areas usually receive more wiretap requests from law enforcement than rural areas. Therefore, telecommunications carriers serving densely populated areas would be required to reserve more capacity for law enforcement's use then those serving rural areas. Category III is the lowest intercept category, representing law enforcement's minimum acceptable capacity requirements for electronic surveillance activity. Category III actual capacity was set for 0.05 percent of the engineered capacity, and the maximum capacity for 0.25 percent of the engineered capacity. Initial Notice of Capacity at 53645.

potential methodologies, are discussed below. The FBI requests all commenters to supply detailed input on these and any other methodologies.

a. Historical Data for SMR Intercepts. A few commenters have suggested using historical intercept data to set capacity requirements for SMR service providers. Like MSS, the historical data on SMR appears to be of little value in establishing a meaningful baseline for capacity requirements. One commenter urges law enforcement not to extract historical interception data from other services, such as wireless terrestrial or local exchange services, and attempt to convert that information for use in the formulation of methodologies for SMR service providers. On the other hand, the FBI also notes another commenter's position that telecommunications services that compete with one another for end users should have comparable capacity requirements so that CALEA compliance does not unfairly burden a competing service provider. The FBI intends to examine the characteristics of SMR services during the course of establishing its capacity requirements. Although the FBI emphasizes law enforcement's overarching need to establish capacity requirements that will ensure public safety, the FBI is sensitive to the competitive concerns of businesses and seeks comment on how these competing interests could affect capacity requirements.

b. Geographic Basis. Most SMR licenses are based on defined geographic areas. Like paging services, SMR services appear to be well suited to capacity requirements that follow geographic parameters. The FBI seeks comment on whether capacity requirements should be based on the same geographic areas on which licenses are based or whether there is a more appropriate geographic basis. Because SMR licenses are awarded on a variety of geographic bases,[13] for example, by Economic Area or by MTA, the FBI seeks comment on the most appropriate geographic area by which to assign capacity requirements for SMR services.

c. Per Carrier Basis. One commenter has suggested that the FBI use each individual SMR service provider's characteristics to establish each service provider's capacity requirements. Unlike MSS service providers, which have unique system architecture and business plans, SMR service providers are not sufficiently different from one another to warrant the establishment of capacity requirements on a per carrier basis. Such an individualized approach is likely to be overly burdensome to administer and enforce. However, the FBI still seeks the opinions of commenters on this proposed approach.

d. Percentage of Subscribers. Conceivably, an approach that applies a percentage of an SMR service provider's overall subscriber base, similar to the methodology proposed for paging services and MSS services, might be used to establish capacity requirements for SMR services. The FBI requests comment on the feasibility of this approach for SMR service providers and asks commenters to identify any sources of data regarding the number of end users that subscribe to either analog or digital SMR services.

e. Level of Subscribership. As suggested for paging service providers, capacity requirements for SMR service providers could be linked to predefined levels of subscribership. Under such an approach, SMR service providers could be grouped in categories according to the number of subscribers they serve. For example, those entities with relatively few subscribers would be assigned an actual capacity requirement of X intercepts, those with an intermediate number of subscribers would be required to support X+Y intercepts, while SMR service providers with a large number of subscribers would have an augmented capacity requirement of X+Y+Z. The FBI seeks comment on the effectiveness of applying capacity requirements that vary according to predefined levels of subscribership.

f. Switch-Based. As an alternative, a commenter suggests that capacity requirements should be switch-based, rather than geographic-based. The commenter also suggests that the FBI could establish a high-end capacity limitation on a single switch. This option seems to be overly burdensome because it would require the FBI to obtain information on the network configuration of every SMR service provider before it could promulgate capacity requirements. Additionally, the network configuration is likely to change regularly as carriers install new switches and upgrade older switches. Commenters are requested to address the merits of this approach, particularly any benefits that could be derived from establishing capacity requirements on a per-switch basis.

g. Local Exchange. A commenter has suggested that the appropriate place for law enforcement to implement an interception is at the local exchange, because SMR service providers are typically connected to the local exchange office by use of ordinary business subscriber lines. Therefore, the commenter asserts that capacity requirements for SMR service providers would be redundant because capacity requirements for local exchange services are already in place. However, the FBI notes that the commenter's suggestion is only accurate for analog SMR service, not digital SMR service. Therefore, the FBI seeks comment on this suggestion.

D. Conclusion

The FBI invites all commenters to provide input in response to this FNOI. The FBI is committed to giving all commenters an opportunity for meaningful participation in the process of implementing CALEA. The FBI will continue to work with the telecommunications industry to develop capacity methodologies for all telecommunications carriers subject to CALEA.

This FNOI is part of a notice and comment proceeding in which ex parte communications are permitted pursuant to 28 CFR 50.17.

III. Filing and Comment Information

Although printed comments are welcomed, commenters are encouraged to submit their responses as electronic documents on a 3.5 inch disk. Documents must be in WordPerfect or Rich Text Format (RTF) and must be the only file on the disk. In addition, all electronic submissions must be accompanied by a printed sheet listing the point of contact, company or organization name and address, and telephone number of an individual who can replace the disk if it was damaged in transit. All comments received will be available for review at the FBI's Freedom of Information and Privacy Act (FOIPA) Reading Room located at FBI Headquarters, 935 Pennsylvania Avenue, NW, Washington, DC 20535. To review the comments, interested parties should contact the FBI's FOIPA Reading Room staff, telephone number (202) 324–8057, to schedule an appointment (48 hours advance notice required).

Authority: 47 U.S.C. 1001–1010.

Dated: March 29, 2000.

Louis J. Freeh,

Director, Federal Bureau of Investigation, Department of Justice.

[FR Doc. 00–16584 Filed 6–29–00; 8:45 am]

BILLING CODE 4410–02–P

[13] See 47 CFR 90.7

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, NW., Room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The number of the 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 VI

North Dakota
ND000056 (June 30, 2000)
ND000057 (June 30, 2000)

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

Massachusetts
MA000019 (Feb. 11, 2000)
Rhode Island
RI000001 (Feb. 11, 2000)
RI000002 (Feb. 11, 2000)

Volume II

Delaware
DE000002 (Feb. 11, 2000)
DE000004 (Feb. 11, 2000)
DE000005 (Feb. 11, 2000)
DE000009 (Feb. 11, 2000)
Pennsylvania
PA000001 (Feb. 11, 2000)
PA000002 (Feb. 11, 2000)
PA000003 (Feb. 11, 2000)
PA000004 (Feb. 11, 2000)
PA000027 (Feb. 11, 2000)

Volume III

Georgia
GA000004 (Feb. 11, 2000)
GA000006 (Feb. 11, 2000)
GA000033 (Feb. 11, 2000)
GA000036 (Feb. 11, 2000)
GA000089 (Feb. 11, 2000)
GA000093 (Feb. 11, 2000)
GA000094 (Feb. 11, 2000)

Volume IV

Michigan
MI000004 (Feb. 11, 2000)
MI000007 (Feb. 11, 2000)
MI000008 (Feb. 11, 2000)
MI000010 (Feb. 11, 2000)
MI000011 (Feb. 11, 2000)
MI000012 (Feb. 11, 2000)
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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, DC this 22nd day of June, 2000.

Carl J. Poleskey

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–16306 Filed 6–29–00; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewals

The NSF management officials having responsibility for the 29 advisory committees listed below have determined that renewing these groups for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

1. Special Emphasis Panel in Graduate Education (#57)
2. Special Emphasis Panel in Elementary, Secondary and Informal Education (#59)
3. Advisory Committee for Mathematical and Physical Sciences (#66)
4. Special Emphasis Panel in Engineering Education and Centers (#173)
5. Advisory Committee for Computer and Information Science and Engineering (#1115)
6. Advisory Committee for Social, Behavioral and Economic Sciences (#1171)
7. Committee on Equal Opportunities in Science and Engineering (#1173)
8. Special Emphasis Panel in Advanced Computational Infrastructure and Research (#1185)
9. Special Emphasis Panel in Astronomical Sciences (#1186)
10. Special Emphasis Panel in Bioengineering and Environmental Systems (#1189)
11. Special Emphasis Panel in Chemical and Transport Systems (#1190)
12. Special Emphasis Panel in Chemistry (#1191)
13. Special Emphasis Panel in Computing—Communications research (#1192)
14. Special Emphasis Panel in Experimental and Integrative Activities (#1193)
15. Special Emphasis Panel in Design, Manufacture and Industry Innovation (#1194)
16. Special Emphasis Panel in Electrical and Communications Systems (#1196)
17. Special Emphasis Panel in Experimental Program to Stimulate Competitive Research (#1198)
18. Special Emphasis Panel in Human Resource Development (#1199)
19. Special Emphasis in Information and Intelligent Systems (#1200)
20. Special Emphasis Panel in Materials Research (#1203)
21. Special Emphasis Panel in Mathematical Sciences (#1204)
22. Special Emphasis Panel in Civil and Mechanical Systems (#1205)
23. Special Emphasis Panel in Advanced Networking and Infrastructure Research (#1207)
24. Special Emphasis Panel in Physics (#1208)
25. Special Emphasis Panel in Polar Programs (#1209)
26. Special Emphasis Panel in Research, Evaluation and Communications (#1210)
27. Special Emphasis Panel in Undergraduate Education (#1214)
28. Special Emphasis Panel in Educational Systemic Reform (#1765)
29. Advisory Panel for Biomolecular Processes (#5138)

Authority for these Committees will expire on June 30, 2002, unless they are renewed. For more information contact Karen York at (703) 306–1182.

Dated: June 27, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–16653 Filed 6–29–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date/Time: July 20, 2000, 8 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 530, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Jorn Larsen-Basse, Program Director Surface Engineering and Material Design, Division of Civil and Mechanical Systems, National Science Foundation, 4201 Wilson Blvd., Room 545, Arlington VA 22230. (703) 306–1361.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'00 Mechanics and Structures of Materials and Surface Engineering and Material Design Review Panel as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 27, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–16651 Filed 6–29–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Small Business Industrial Innovation, Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Small Business Industrial Innovation, Committee of Visitors (61).

Date/Time: July 25–27, 2000—8:30 a.m.–5:00 p.m. each day.

Place: Room 365, NSF, 4201 Wilson boulevard, Arlington, VA.

Type of Meeting: Part-Open—(see Agenda, below).

Contact Person: Dr. Kesh Narayanan, Acting Division Director for Design, Manufacture, and Industrial Innovation, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1330.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including program evaluation, GPRA assessments, and access to privileged materials.

Agenda

Closed: July 25 and 26 from 8:30–5:00 each day—To review the merit review processes covering funding decisions made during the immediately preceding three fiscal years of the Design, Manufacture, and Industrial Innovation Programs.

Open: July 27 from 8:30–5:00—To assess the results of NSF program investments in the Design, Manufacture, and Industrial Innovation Division. This shall involve a discussion and review of results focused on NSF and grantee outputs and related outcomes achieved or realized during the preceding three fiscal years. These results may be based on NSF grants or other investments made in earlier years.

Reason for Closing: During the closed session, the Committee will be reviewing proposal actions that will include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 27, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–16652 Filed 6–29–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 120th meeting on July 25–27, 2000, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, July 25, 2000—8:30 a.m. Until 5:30 p.m

A. *8:30 a.m.–10:30 a.m.: ACNW Planning and Procedures (Open)*—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The ACNW will discuss planned tours and ACNW-related activities of individual members.

B. *10:45 a.m.–12:15 p.m.: Revised High-Level Guidelines for Performance-Based Activities (Open)*—The NRC staff will present their response to public comments on the Guidelines for Performance-Based Activities. The NRC staff will explain their approach to developing performance-based regulations consistent with Commission's Direction.

C. *1:15 p.m.–2:45 p.m.: Status of the NRC's Decommissioning Program (Open)*—The Committee will hear a comprehensive overview of decommissioning activities, including the decommissioning of Site Decommissioning Management Plan (SDMP) sites, other complex decommissioning sites, and commercial reactor decommissioning. The NRC staff is expected to provide current schedules for the clean-up of all decommissioning sites.

D. *3:00 p.m.–5:30 p.m.: Preparation of ACNW Reports (Open)*—The Committee will discuss planned reports on the following topics: Risk-Informed Approaches to Nuclear Materials Regulatory Applications, comments on the LLW NUREG report on Performance Assessment, Highlights of the ACNW visit to the U.K. and France, a response to comments on the ACNW Action Plan, and possible comments on issues discussed during this meeting.

Wednesday, July 26, 2000—8:30 a.m. Until 5:30 p.m.

E. *8:30 a.m.–10:30 a.m.: DOE's Performance Confirmation Program for the Proposed Repository at Yucca Mountain, Nevada (Open)*—Representatives of the Department of Energy (DOE) will brief the Committee on details of their performance confirmation program. This program will monitor various aspects of the repository design in the preclosure phase of operation to ensure the repository is behaving as predicted.

F. *10:45 a.m.–12:15 p.m.: Summary of the NRC staff's Yucca Mountain Key Technical Issue Resolution Strategy (Open)*—The NRC staff will update the Committee on the KII resolution strategy and the results of recent interactions with the DOE.

G. *1:15 p.m.–2:45 p.m.: Hydrogeology Research (Open)*—The Committee will review a project by NRC's Office of Nuclear Regulatory Research on hydrogeologic model development and parameter uncertainty.

H. *3:00 p.m.–3:45 p.m.: Prepare for the Next Public Meeting With the Commission (Open)*—The ACNW will begin preparations for the next public meeting with the Commission. The meeting is tentatively scheduled for October 17, 2000. Potential topics for discussion include: the development of a Yucca Mountain Review Plan and 10 CFR Part 63 Disposal of High-Level

Radioactive Waste in a proposed geologic repository at Yucca Mountain, Nevada; high-lights of the Committee's recent European trip, Risk Informed Regulation in the Office of Nuclear Material Safety and Safeguards; and comments on the staff's Yucca Mountain Site Sufficiency Strategy.

I. *Continue Preparation of ACNW Reports (Open)*—The Committee will continue preparation of ACNW reports noted in item D.

Thursday, July 27, 2000—8:30 a.m. Until 3:00 p.m.

J. *8:30 a.m.–9:30 a.m.: Meeting With the Deputy Director of the Office of Nuclear Material Safety and Safeguards (Open)*—The Committee will meet with the Deputy Director to discuss items of mutual interest.

K. *9:30 a.m.–2:00 p.m.: Complete ACNW Reports (Open)*—Complete preparation of ACNW reports noted in item D.

L. *2:00 p.m.–3:00 p.m.: Miscellaneous (Open)*—The Committee will discuss miscellaneous matters related to the conduct of the Committee and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 28, 1999 (64 FR 52352). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Richard K. Major, ACNW, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Richard K. Major, ACNW (Telephone 301/415–7366), between 8:00 A.M. and 5:00 P.M. EDT.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. EDT at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: June 26, 2000.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 00–16650 Filed 6–29–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste

On January 6, 1982 (47 FR 596 and 47 FR 600), the Nuclear Regulatory Commission (NRC) published in the **Federal Register** final amendments to 10 CFR parts 71 and 73 (effective July 6, 1982), that require advance notification to Governors or their designees by NRC licensees prior to transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in part 73 is for spent nuclear reactor fuel shipments and the notification for part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR part 73).

The following list updates the names, addresses, and telephone numbers of those individuals in each State who are responsible for receiving information on nuclear waste shipments. The list will be published annually in the **Federal Register** on or about June 30 to reflect any changes in information.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS

State	Part 71	Part 73
Alabama	Col. James H. Alexander, Director, Alabama Department of Public Safety, PO Box 1511, Montgomery, AL 36102–1511, (334) 242–4394.	Same.
Alaska	Douglas Dasher, Alaska Department of Environmental Conservation, Northern Regional Office, 610 University Avenue, Fairbanks, AK 99709–3643, (907) 451–2172.	Same.
Arizona	Aubrey V. Godwin, Director, Arizona Radiation Regulatory Agency, 4814 South 40th Street, Phoenix, AZ 85040, (602) 255–4845, ext. 222, 24 hours: (602) 223–2212.	Same.
Arkansas	David D. Snellings, Jr., Director, Division of Radiation Control, and Emergency Management, Arkansas Department of Health, 4815 West Markham Street, Mail Slot #30, Little Rock, AR 72205–3867, (501) 661–2301, 24 hours: (501) 661–2136.	Same.
California	Captain Jim Abrames, California Highway Patrol, Enforcement Services Division, PO Box 942898, Sacramento, CA 94298–0001, (916) 445–3253 24 hours: 1–(888) 330–2015.	Same.
Colorado	Captain Allan M. Turner, Hazardous Materials Section, Colorado State Patrol, 700 Kipling Street, Suite 1000, Denver, CO 80215–5865, (303) 239–4546, 24 hours: (303) 239–4501.	Same.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

State	Part 71	Part 73
Connecticut	Dr. Edward L. Wilds, Jr., Director, Division of Radiation, Department of Environmental Protection, 79 Elm Street, Hartford, CT 06106–5127, (860) 424–3029, 24 hours: (860) 424–3333.	Same.
Delaware	Brian J. Bushweller, Secretary, Department of Public Safety, PO Box 818, Dover, DE 19903, (302) 739–4321 24 hours: (pager) (302) 435–2725.	Same.
Florida	Harlan W. Keaton, Manager, Bureau of Radiation Control, Environmental Radiation Program, Department of Health, PO Box 680069, Orlando, FL 32868–0069, (407) 297–2095.	Same.
Georgia	Al Hatcher, Director, Transportation Division, Public Service Commission, 1007 Virginia Avenue, Suite 310, Hapeville, GA 30354, (404) 559–6600.	Same.
Hawaii	Mr. Gary Gill, Deputy Director for Environmental Health, State of Hawaii Department of Health, PO Box 3378, Honolulu, HI 96813, (808) 586–4424.	Same.
Idaho	Major David C. Rich, Idaho State Police, PO Box 700, Meridian, ID 83680–0700, (208) 884–7206, 24 hours: (208) 334–2900.	Same.
Illinois	Thomas W. Ortciger, Director, Illinois Department of Nuclear Safety, 1035 Outer Park Drive, 5th Floor, Springfield, IL 62704, (217) 785–9868, 24 Hours: (217) 785–9900.	Same.
Indiana	Melvin J. Carraway, Superintendent, Indiana State Police, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, IN 46204, (317) 232–8248.	Same.
Iowa	Ellen M. Gordon, Administrator, Emergency Management Division, Hoover State Office Building, Des Moines, IA 50319–0113, (515) 281–3231.	Same.
Kansas	Frank H. Moussa, M.S.A., Technological Hazards Administrator, Department of the Adjutant General, Division of Emergency Management, 2800 SW. Topeka Boulevard, Topeka, KS 66611–1287, (785) 274–1409, 24 hours: (785) 296–3176.	Same.
Kentucky	John A. Volpe, Ph.D., Manager, Radiation Health and Toxic Agents Branch, Cabinet for Health Services, 275 East Main Street, Frankfort, KY 40621–0001 (502) 564–3700.	Same.
Louisiana	Major Joseph T. Booth, Louisiana State Police, 7901 Independence Boulevard, PO Box 66614 (#21), Baton Rouge, LA 70896–6614, (225) 925–6113.	Same.
Maine	Chief of the State Police, Maine Department of Public Safety, 42 State House Station, Augusta, ME 04333, (207) 624–7000.	Same.
Maryland	First Sgt. John M. Wilhelm, Maryland State Police, Communication Services Division, 1201 Reisterstown Road, Pikesville, MD 21208, (410) 653–4208 24 hours: (410) 653–4200.	Same.
Massachusetts	Robert M. Hallisey, Director, Radiation Control Program, Massachusetts Department of Public Health, 174 Portland Street, 5th Floor, Boston, MA 02114, (617) 727–6214.	Same.
Michigan	Captain John Ort, Commander, Special Operations Division, Michigan State Police, 714 South Harrison Road, East Lansing, MI 48823, (517) 336–6263, 24 hours: (517) 336–6100.	Same.
Minnesota	John R. Kerr, Assistant Director, Administration and Preparedness Branch, Department of Public Safety, Division of Emergency Management, 444 Cedar St., Suite 223, St. Paul, MN 55101–6223, (651) 296–0481, 24 hours: (651) 649–5451.	Same.
Mississippi	Robert R. Latham, Jr., Emergency Management Agency, PO Box 4501, Fondren Station, Jackson, MS 39296–4501, (601) 352–9100.	Same.
Missouri	Jerry B. Uhlmann, Director, Emergency Management Agency, PO Box 116, Jefferson City, MO 65102, (573) 526–9101, 24 hours: (573) 751–2748.	Same.
Montana	Jim Greene, Administrator, Disaster & Emergency Service, PO Box 4789, Helena, MT 59604, (406) 841–3911.	Same.
Nebraska	Major Bryan J. Tuma, Nebraska State Patrol, PO Box 94907, Lincoln, NE 68509–4907, (402) 479–4950, 24 hours: (402) 471–4545.	Same.
Nevada	Stanley R. Marshall, Supervisor, Radiological Health Section, Health Division, Department of Human Resources, 1179 Fairview Drive, Suite 102, Carson City, NV 89701–5405, (775) 687–5394 x276, 24 hours: (775) 688–2830.	Same.
New Hampshire	Richard M. Flynn, Commissioner, New Hampshire Department of Safety, James H. Hayes Building, 10 Hazen Drive, Concord, NH 03305, (603) 271–2791 (603) 271–3636 (24 hours).	Same.
New Jersey	Kent Tosch, Chief, Bureau of Nuclear Engineering, Department of Environmental Protection, PO Box 415, Trenton, NJ 08625–0415, (609) 984–7701.	Same.
New Mexico	Max D. Johnson, Bureau Chief, Technological Hazards Bureau, Department of Public Safety, PO Box 1628, Santa Fe, NM 87504–1628, (505) 476–9620, 24 hours: (505) 827–9126.	Same.
New York	Edward F. Jacoby, Jr., Director, State Emergency Management Office, 1220 Washington Avenue, Building 22—Suite 101, Albany, NY 12226–2251, (518) 457–2222.	Same.
North Carolina	Line Sgt. Mark Dalton, Hazardous Materials Coordinator, North Carolina Highway Patrol Headquarters, 4702 Mail Service Center, Raleigh, NC 27699–4702, (919) 733–5282, After hours: (919) 733–3861.	Same.

INDIVIDUALS RECEIVING ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

State	Part 71	Part 73
North Dakota	Jeffery L. Burgess, Director, Division of Environmental Engineering, North Dakota Department of Health, 1200 Missouri Avenue, Box 5520, Bismarck, ND 58506–5520, (701) 328–5188, After hours: (701) 328–2121.	Same.
Ohio	Carol A. O'Claire, Supervisor, Ohio Emergency Management Agency, 2855 West Dublin Granville Road, Columbus, OH 43235–2206, (614) 799–3915, 24 hours: (614) 889–7150.	Same.
Oklahoma	Bob A. Ricks, Commissioner, Oklahoma Department of Public Safety, PO Box 11415, Oklahoma City, OK 73136–0145, (405) 425–2001, 24 hours: (405) 425–2424.	Same.
Oregon	David Stewart-Smith, Energy Resources Division, Oregon Office of Energy, 625 Marion Street, NE, Suite 1, Salem, OR 97301–3742, (503) 378–6469.	Same.
Pennsylvania	John Bahnweg, Director of Operations and Training, Pennsylvania Emergency Management Agency, PO Box 3321, Harrisburg, PA 17105–3321, (717) 651–2001.	Same.
Rhode Island	William A. Maloney, Associate Administrator, Motor Carriers Section, Division of Public Utilities and Carriers, 100 Orange Street, Providence, RI 02903, (401) 222–3500; ext. 150.	Same.
South Carolina	Henry J. Porter, Assistant Director, Hazardous, Radiological and Infectious, Waste Management Division, Department of Health & Environmental Control, 2600 Bull Street, Columbia, SC 29201, (803) 896–4245, Emergency: (803) 253–6488.	Same.
South Dakota	John A. Berheim, Director, Division of Emergency Management, 500 E. Capitol Avenue, Pierre, SD 57501–5070, (605) 773–3231.	Same.
Tennessee	John D. White, Jr., Director, Emergency Management Agency, 3041 Sidco Drive, Nashville, TN 37204–1504, (615) 741–0001, After hours: (Inside TN) 1–800–262–3400, (Outside TN) 1–800–258–3300.	Same.
Texas	Richard A. Ratliff, Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, TX 78756, (512) 834–6688.	Col. Thomas A. Davis, Director, Texas Department of Public Safety, Attn: EMS Preparedness Sec., PO Box 4087, Austin, TX 78773–0223, (512) 424–2450, (512) 424–2277 (24 hrs).
Utah	William J. Sinclair, Director, Division of Radiation Control, 168 North 1950 West, PO Box 144850, Salt Lake City, UT 84114–4850, (801) 536–4250, After hours: (801) 536–4123.	Same.
Vermont	Lieutenant Col. Thomas A. Powlovich, Director, Division of State Police, Department of Public Safety, 103 South Main Street, Waterbury, VT 05671–2101, (802) 244–7345.	Same.
Virginia	L. Ralph Jones, Jr., Director, Technological Hazards Division, Department of Emergency Services, Commonwealth of Virginia, 10501 Trade Court, Richmond, VA 23236, (804) 897–6500, ext. 6579.	Same.
Washington	Lieutenant Gail R. Otto, Washington State Patrol, PO Box 42600, Olympia, WA 98504–2600, (360) 478–4644 (ext. 103).	Same.
West Virginia	Colonel Gary L. Edgell, Superintendent, West Virginia State Police, 725 Jefferson Road, South Charleston, WV 25309, (304) 746–2111.	Same.
Wisconsin	Edward J. Gleason, Administrator, Wisconsin Division of Emergency Management, PO Box 7865, Madison, WI 53707–7865, (608) 242–3232.	Same.
Wyoming	Captain L. S. Gerard, Support Services Officer, Commercial Carrier, Wyoming Highway Patrol, 5300 Bishop Boulevard, Cheyenne, WY 82009–3340, (307) 777–4317, 24 hours: (307) 777–4317.	Same.
District of Columbia	Norma J. Stewart, Chief, Bureau of Food, Drug & Radiation Protection, Department of Health, 825 North Capitol St., NE, Room 5125, Washington, DC 20002, (202) 442–5919.	Same.
Puerto Rico	Hector Russe Martinez, Chairman, Environmental Quality Board, PO Box 11488, San Juan, PR 00910, (787) 767–8056 or, (787) 767–8181.	Same.
Guam	Jesus T. Salas, Administrator, Guam Environmental Protection Agency, PO Box 22439 GMF, Barrigada, Guam 96921, (671) 475–1658/9.	Same.
Virgin Islands	Dean C. Plaskett, Esq., Commissioner, Department of Planning and Natural Resources, Cyril E. King Airport, Terminal Building—Second Floor, St. Thomas, Virgin Islands 00802, (340) 774–3320.	Same.
American Samoa	Pati Faiai, Government Ecologist, Environmental Protection Agency, Office of the Governor, Pago Pago, American Samoa 96799, (684) 633–2304.	Same.
Commonwealth of the Northern Mariana Islands.	Joaquin A. Tenorio, Ph.D., Secretary, Department of Lands and Natural Resources, Commonwealth of Northern Mariana Islands Government, Saipan, MP 96950, (670) 322–9830 or (670) 322–9834.	Same.

Questions regarding this matter should be directed to Spiros Droggitis, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (INTERNET Address: SCD@NRC.GOV) or at (301) 415–2367.

Dated at Rockville, Maryland this 16th day of June, 2000.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Director, Office of State and Tribal Programs.

[FR Doc. 00–16443 Filed 6–29–00; 8:45 am]

BILLING CODE 7590–01–P

PRESIDIO TRUST

The Presidio of San Francisco, California; Notice of Intent To Prepare an Amendment to the July 1994 Final General Management Plan Amendment and an Associated Supplemental Environmental Impact Statement

AGENCY: The Presidio Trust.

ACTION: Notice of intent to conduct public scoping and to prepare a Supplemental Environmental Impact Statement.

SUMMARY: The Presidio Trust (Trust) announces its intention to prepare an amendment for Area B of The Presidio of San Francisco (Area B) to the July 1994 Final General Management Plan Amendment (GMPA) and an associated Supplemental Environmental Impact Statement (SEIS) that will be tiered off the GMPA Environmental Impact Statement (EIS) pursuant to 40 CFR 1508.28. The Trust will hold two public scoping meetings to determine the scope of impact topics and alternatives to be addressed in the SEIS.

DATES: The first of two scoping meetings will be held on July 12, 2000, from 6 to 9 p.m., at the Log Cabin (Presidio Building 1299), The Presidio of San Francisco.

SUPPLEMENTARY INFORMATION:

Background

After Congress designated The Presidio of San Francisco (Presidio) for closure as a military base in 1989, the Presidio's long-time occupant, the U.S. Army, transferred jurisdiction of the parcel to the National Park Service (NPS) in 1994. As part of the transition, the NPS in July 1994 completed and issued the final GMPA for the Presidio laying out a vision for its future use and management.

In 1996, Congress established the Trust pursuant to the Presidio Trust Act (16 U.S.C. 460bb appendix) (Trust Act). The Trust is a wholly-owned government corporation whose purposes are to preserve and enhance the Presidio as a national park, and to ensure that the Presidio becomes financially self-sufficient by 2013 (*i.e.*, generate sufficient revenue without any federal appropriation to fund long-term operating and maintenance costs and to fund capital reserves for ongoing capital expenditure needs).

The Trust assumed administrative jurisdiction over Area B (approximately 80 percent of the Presidio) on July 1, 1998, and NPS retains jurisdiction of the coastal areas (Area A). The Trust Act directs the Trust to manage the property under its administrative jurisdiction in accordance with both the purposes of the Act establishing the Golden Gate National Recreation Area and with the ''general objectives'' of the GMPA. Since assuming administrative jurisdiction over Area B, the Trust has begun to implement specific elements of the GMPA, despite the fact that changed conditions at times require the Trust to reassess certain of the GMPA's site-specific plans and programs. Both NPS and the public have expressed desire for the Trust to better explain how it intends to implement the GMPA Presidio-wide in view of the need under some circumstances to depart from the site-specific proposals of the GMPA. The Trust believes that the best means to understand proposed departures from the GMPA is to undertake additional comprehensive programmatic planning that updates the GMPA. In announcing this undertaking, the Trust acknowledges and wishes to respond to the strong sentiment of the public asking for clarification of the Trust's Presidio-wide approach to circumstances that have changed since NPS finalized the GMPA, before the Trust was created.

By this notice, the Trust is announcing its intent to begin a planning effort for Area B that will be conducted pursuant to the National Environmental Policy Act of 1969 (Pub. L. 91–90 as amended) and its procedural requirements. The planning will start with the GMPA as a baseline and take into account intervening events that have altered the GMPA's site-specific assumptions, changed circumstances and new opportunities that have arisen since the GMPA was finalized, and the new Trust mandates. The proposed amendment is expected to identify an updated vision for Area B, and the SEIS, which will tier from the GMPA EIS, will evaluate a range of development alternatives for Area B.

Proposed Scoping Process and Schedule

This notice of intent initiates the scoping process for the proposed action. Beginning July 12, 2000, the Trust will provide opportunities to explain the proposed GMPA amendment and to solicit suggestions, recommendations and comments to help refine the issues and alternatives to be addressed in the SEIS. Meetings with interested persons and organizations will be held during the scoping period. In addition, the Trust will consult local, state and federal agencies with interest in or expertise with the area of investigation.

The first scoping meeting to discuss and take scoping comments will be conducted in a workshop format and will be held on Wednesday, July 12, 2000, from 6 to 9 p.m., at the Log Cabin in the Presidio. Using the GMPA and projects currently underway or completed as a baseline, the workshop will focus on areas of opportunity for change. The Trust will make available information summarized from past planning workshops and other public outreach sessions and seek the public's input on topics including planning principles, Presidio programs, transportation, housing, visitor services and land use for purposes of both developing a reasonable range of alternatives and identifying specific impacts to be evaluated in the SEIS. At a second scoping meeting the Trust will, using the information from the July meeting and other public input, offer a range of conceptual programmatic alternatives for public comment. The date, time and location of the second meeting will be announced in a variety of media including publication in the Trust's monthly newsletter, the Presidio Post, posting on the Trust's web-site (www.presidiotrust.gov) and notification to those persons and entities that may call or write requesting notice of subsequent events concerning the planning process.

To ensure that the full range of issues and alternatives related to this proposed action are identified and addressed, all persons affected by or otherwise interested in the updated plan for the Presidio are invited to participate in determining the scope and significance of issues to be analyzed in the SEIS by submitting written comments or by attending one of the scoping meetings.

ADDRESSES: Written comments concerning the content of the plan and the scope of the SEIS should be sent to John Pelka, NEPA Compliance Coordinator, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Fax: 415–561–5315. E-mail: jpelka@presidiotrust.gov.

FOR FURTHER INFORMATION: Contact John Pelka, NEPA Compliance Coordinator, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415–561–5300.

Dated: June 27, 2000.

Karen A. Cook,

General Counsel.

[FR Doc. 00–16715 Filed 6–29–00; 8:45 am]

BILLING CODE 4310–4R–U

PRESIDIO TRUST

Notice of Receipt of and Availability for Public Comment on an Application for Wireless Telecommunications Facilities Site; The Presidio of San Francisco, California

AGENCY: The Presidio Trust.

ACTION: Public notice.

SUMMARY: This notice announces the Presidio Trust's receipt of and availability for public comment on an application from Nextel Communications (''Nextel'') for a wireless telecommunications facilities site (the ''Project'') in The Presidio of San Francisco. The proposed location of the Project is directly above the north entrance of the MacArthur Tunnel and adjacent to Park Boulevard near Amatury Loop, San Francisco, California (the ''Project Site'').

The Project involves placing a Yagi cellular antenna and a one-story equipment cabinet at the Project Site. The cellular antenna will be approximately six inches by 30 inches in size. The equipment cabinet will be five feet wide by 13 feet long by six feet tall and will sit on a ten-inch concrete pad. The equipment cabinet will be surrounded by a seven-foot high, black plastic clad chain link fence. Some grading of the area around the Project Site will be required; additional planting to camouflage the equipment cabinet will be performed, altering the historic ground cover and vegetation. Both telecommunication connectivity and electrical power for the Project will be provided through new underground cables connected to existing infrastructure.

Comments: Comments on the proposed Project must be sent to Devon Danz, Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052, and be received by August 4, 2000. A copy of Nextel's application is available upon request to the Presidio Trust.

FOR FURTHER INFORMATION CONTACT: Devon Danz, Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415–561–5300.

Dated: June 26, 2000.

Karen A. Cook,

General Counsel.

[FR Doc. 00–16550 Filed 6–29–00; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27191]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

June 23, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 18, 2000 to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After July 18, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New Century Energies, Inc., et al. (70–9635)

New Century Energies, Inc. (''NCE''), a registered holding company under the Act, 1225 17th Street, Denver, Colorado 80202–5533; NCE's utility subsidiaries Public Service Company of Colorado (''PSCo''), 1225 17th Street, Denver, Colorado 80202–5533, Southwestern Public Service Company (''SPS''), Tyler at Sixth, Amarillo, Texas 79101, and Cheyenne Light, Fuel and Power Company (''Cheyenne''), 108 West 18th Street, Cheyenne, Wyoming 82003; NCE's nonutility subsidiaries New Century Services, Inc., WestGas Interstate, Inc., NC Enterprises, Inc. (''NC Enterprises''), New Century International, Inc., PS Colorado Credit Corporation, Colorado Natural Fuels LLC, Natural Station Equipment LLC, P.S.R. Investments, Inc., Green and Clear Lakes Company, 1480 Welton, Inc., The Planergy Group, Inc., New Century-Cadence, Inc., New Century WYCO, Inc., and New Century O&M Services, Inc., all located at 1225 17th Street, Denver, Colorado 80202–5533; NCE's nonutility subsidiaries Utility Engineering Corporation and Quixx Corporation, both at 500 South Taylor, Amarillo, Texas 79101, and e prime, inc., 1099 18th Street, Denver, Colorado 80202; Northern States Power Comopany (''NSP''), a public utility company and a holding company exempt from registration under section 3(a)(2) of the Act,[1] 414 Nicollet Mall, Minneapolis, Minnesota 55401; NSP's utility subsidiary Northern States Power Company (''NSP–W''), 100 North Barstow Street, Eau Claire, Wisconsin 54701; NSP's nonutility subsidiaries Energy Masters Itnernational, Inc., Seren Innovations, Inc., Ultra Power Technologies, Inc., Eloigne Company, First Midwest Auto Park, Inc., United Power and Land Company, Reddy Kilowatt Corporation, NSP Financing I, and Nuclear Management Company, all located at 414 Nicollet Mall, Minneapolis, Minnesota 55401; and NSP's nonutility subsidiaries Viking Gas Transmission Company, 825 Rice Street, St. Paul, Minnesota 55117, and NRG Energy, Inc., 1221 Nicollet Mall, Minneapolis, Minnesota 55403 (collectively, ''Applicants''), have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 32 and 33 of the Act and rules 43, 45, 46, 53 and 54 under the Act.

I. Background and Summary

NCE and NSP have previously filed an application-declaration (''Merger Application'')[2] seeking approvals related to the proposed combination of NCE and NSP (''Merger'').[3] The new

[1] *See* Northern State Power Company, HCAR No. 22334 (Dec. 23, 1981). Section 3(a)(2) of the Act provides an exemption from registration to a holding company that is ''predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized and states contiguous thereto.''

[2] The Commission issued a notice of the Merger Application on March 13, 2000 (HCAR No. 27152).

[3] Under an Agreement and Plan of Merger, dated as of March 24, 1999 (''Merger Agreement''), NCE will merge with and into NSP, and NCE's utility subsidiaries will become subsidiaries of NSP. As part of the Merger, NSP is expected to transfer its existing utility operations that are being conducted directly by NSP at the parent company level to a newly formed, wholly owned subsidiary (''New

combined entity will be named Xcel Energy Inc. (''Xcel''). Applicants now request authority with respect to the financing arrangements, ongoing financings and other matters pertaining to Xcel and its subsidiaries after giving effect to the Merger.[4]

In summary, Applicants request authority for the period through September 30, 2004 (''Authorization Period''), unless otherwise noted, for: (i) External financings by Xcel, Cheyenne and BMG; (ii) intrasystem financing, including guarantees, between Xcel and certain of the Subsidiaries, and among certain of the Subsidiaries, (iii) Xcel and, to the extent not exempt under rule 52, the Subsidiaries to enter into hedging transactions for existing and anticipated debt in order to manage interest rate costs; (iv) the issuance by the Subsidiaries of types of securities not exempt under rules 45 and 52; (v) Xcel and the Subsidiaries to establish, guarantee the obligations of, and borrow the proceeds of the debt and preferred securities issued by, one or more financial entities; (vi) Xcel and any Subsidiary to acquire and restructure investments in one or more special purpose entities organized for the purpose of acquiring, financing, and holding the securities of one or more Nonutility Subsidiaries; (vii) Xcel and any Nonutility Subsidiary to pay dividends out of capital and unearned surplus; and (viii) the use of proceeds of financings to invest in exempt wholesale generators (''EWGs''), as defined in section 32 of the Act, and foreign utility companies (''FUCOs''), as defined in section 33 of the Act.

The proceeds from the financings will be used for general corporate purposes, including: (i) Investments by and capital expenditures of Xcel and the Subsidiaries; (ii) the repayment, redemption, refunding or purchase by Xcel or any of the Subsidiaries of securities issued by such companies exempt under rule 42; (iii) working capital requirements of Xcel and the Subsidiaries; and (iv) other lawful general purposes. Any use of proceeds to make investments in Subsidiaries organized under rule 58 (''Rule 58 Subsidiaries'') will be subject to the investment limitation of that rule, and any use of proceeds to make investment in any EWG or FUCO will be subject to the limitation of rule 53(a), as it may be modified by order of the commission.

Applicants propose that the following general conditions apply, where appropriate, to the proposed financing transactions. First, the effective cost of money on securities issued to non-associates proposed by Applicants will not exceed competitive market rates for securities of comparable credit quality with similar terms and features. Second, the maturity of authorized indebtedness will not exceed 50 years. Third, any long-term debt to be issued by Xcel will, at the time of original issuance, be rated at least investment grade by a nationally recognized credit rating organizations. Fourth, Xcel's common equity, as reflected on its most recent Form 10–K or Form 10–Q and as adjusted to reflect subsequent events that affect capitalization, will be at least 30% of consolidated capitalization.

By order dated April 7, 1999 (HCAR No. 27000), NCE and certain of its Subsidiaries were authorized to engage in, among other things, various external and intrasystem financing transactions through December 31, 2001. NCE was also authorized by order dated February 26, 1999 (HCAR No. 26982), to use proceeds of financing invest in EWGs and FUCOs if the aggregate investment in EWGs and FUCOs does not exceed 100% of the system's consolidated retained earnings. These companies will relinquish the authority granted in those orders on the effective date of an order by the Commission in this proceeding approving the proposed transactions.

II. Request Order

A. Xcel External Financing

Xcel requests authority to issue and sell common stock and long-term debt securities during the Authorization Period, provided that the aggregate proceeds of these issuances, together with any long-term and preferred securities issued by financing entities established by Xcel more particularly described below, does not exceed $2.0 billion. These amounts exclude issuances of Xcel common stock under various benefit and reinvestment plans more particularly described below.

All common stock sales will be at prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets. Xcel may also issue common stock in public or privately negotiated transactions in exchange for the equity securities or assets of other companies, provided that the acquisition of any such equity securities or assets has been authorized in a separate proceeding or is exempt under the Act or the rules under the Act.

Xcel's long-term debt securities may be issued under an indenture to be entered into between Xcel and a national bank, as trustee, with a supplemental indenture to be executed in respect of each separate offering of one or more series of such securities. The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to long-term debt securities, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding.

Applications also request authority to have outstanding at one time short-term debt in an aggregate principal amount of up to $1.5 billion, consisting of bank loans or commercial paper. Each loan under these facilities will have a maturity date not more than one year from the date of the borrowing.

Further, Applicants propose for Xcel to issue other types of securities from time to time as necessary or desirable in order to minimize financing costs or obtain new capital under then existing market conditions. Applicants request that the Commission reserve jurisdiction over the issuance of types of securities by Xcel.

B. Benefit and Dividend Reinvestment Plan

Xcel requests authority to issue an additional 30 million shares of common stock (subject to adjustment for stock splits) of Xcel from time to time through June 30, 2007 under its benefits plans and dividend reinvestment plan.[5] Shares of Xcel common stock for use under these plans may either be newly issued shares, treasury shares or shares purchased in the open market.

NSP maintains an employee stock ownership plan for it and its Subsidiaries. NSP also maintains a stock equivalent award plan for the non-employee directors of NSP. Amounts held under the plan are paid in shares of NSP common stock upon a director's termination of service. In addition, NSP maintains for its officers and key employees a long-term incentive plan (''NSP Incentive Plan'') under which

NSP''). In addition, Black Mountain Gas (''BMG''), a division of NSP with gas utility operations in Arizona, will become a utility subsidiary of Xcel.

[4] As used in this Notice, the term ''Utility Subsidiaries'' means PSCo, SPS, Cheyenne, New NSP, NSP–W and BMG. In addition, the term ''Nonutility Subsidiaries'' means each of the direct and indirect nonutility subsidiaries of NCE and NSP, including those identified above, and their respective subsidiaries, as well as any future direct or indirect nonutility subsidiaries of Xcel whose equity securities may be acquired in accordance with the Commission's authorization in this proceeding or in accordance with an exemption provided under the Act or applicable rules. Further, the term ''Subsidiaries'' means the Utility Subsidiaries and the Nonutility Subsidiaries collectively.

[5] Following the Merger, the Xcel dividend reinvestment plan will include participants in NCE's dividend reinvestment plan.

non-qualified stock options, incentive stock options, restricted common stock, stock appreciation rights and performance awards are granted to participants.

NCE currently maintains for its and its Subsidiaries' employees three different benefit plans which provide for the issuance and/or sale of common stock. In addition, NCE has adopted an incentive plan for certain employees (''NCE Incentive Plan''), which authorizes grants of common stock, stock options and other stock-based awards to eligible executives and other key employees, and a compensation plan for outside directors (''NCE Outside Directors' Plan'') under which non-employee directors may elect to receive director compensation in the form of common stock. Upon completion of the Merger, all outstanding shares of and options to acquire NCE common stock under these plans will be converted into shares of Xcel common stock based on the ratio at which NCE common stock shares will be converted into NSP common stock shares in the Merger.

Following the Merger, it is not expected that any new awards will be made under the NCE Incentive Plan and that such plan will be replaced by the NSP Incentive Plan. In addition, following the Merger, the NCE Outside Directors' Plan will no longer be active.

Xcel may adopt on or more other plans which will provide for the issuance and/or sale of Xcel common stock, stock options and stock awards to a group which may include directors, officers and employees. Xcel may issue shares of its common stock within the proposed limitations described above in order to satisfy its obligations under those plans.

C. Subsidiary Financing

1. External

Applicants request authority for Cheyenne to issue short-term debt to nonassociate lenders maturing in less than one year in an aggregate amount at any one time outstanding that, when combined with borrowings from associate lenders described below, will not exceed $40 million. All securities of Cheyenne, except for securities with maturities of less than 12 months, are approved by the Wyoming Public Service Commission.

Similarly, all securities of BMG, except for securities with maturities of less than 12 months, will be approved by the Arizona Corporation Commission. Accordingly, Applicants request authority for BMG to issue debt maturing in less than one year to one or more nonassociate lenders in an aggregate principal amount at any one time outstanding that, when combined with borrowings from associate lenders described below, will not exceed $40 million.

2. Intra-system Financing

Applicants request authority (i) for Xcel to finance the Subsidiaries and certain of the Subsidiaries to finance other Subsidiaries and (ii) Xcel and the Subsidiaries to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support with respect to the debt and other obligations of Subsidiaries (''Intrasystem Financings''). the aggregate outstanding principal amount of Intrasystem Financings, other than borrowings by BMG and Cheyenne, would not exceed $2.5 billion at any one time during the Authorization Period, excluding financings that are exempt under rules 45(b) and 52, as applicable.

Interest on any intra-system loans or extensions of credit not exempt under rule 45(b) or rule 52, as applicable, will equal the daily weighted average effective rate of commercial paper, revolving credit and/or other short-term borrowings of the lender, including an allocated share of commitment fees and related expenses. If the lender has non of these borrowings outstanding, then the interest rate will be predicated on the Federal Funds' rate. In the limited circumstances where a borrowing Nonutility Subsidiary is not directly or indirectly wholly-owned by Xcel, Applicants request authority for Xcel or a Nonutility Subsidiary to make loans to those subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital.

Intrasystem Financings would generally be in the form of cash capital contributions, open account advances, loans and/or capital stock purchases. Intrasystem financings will provide funds for general corporate purposes and other working capital requirements, investments and capital expenditures.

Applicants request the Commission reserve jurisdiction over the issuance by the Subsidiaries of types of securities other than those described above where rules 45 or 52 would not provide an exemption.

D. Existing Financing Arrangements

The NCE system has entered into various financing transactions based upon prior Commission orders. With respect to existing financing obligations by NCE itself, NCE will to the extent possible transfer those obligations to Xcel, and will count them towards the applicable proposed authorization limits for Xcel as described above. With respect to the existing financing obligations and arrangements that NCE's subsidiaries have entered into and that they are able to retain post-Merger, these obligations and arrangements will be counted towards the applicable proposed authorization limits for Subsidiaries, except as described below.

Separately, Applicants request authority for NC Enterprises to transfer its obligations under two notes issued in connection with its acquisitions, previously authorized by the Commission, of certain NCE Subsidiaries. One of the Notes, having an outstanding principal balance of approximately $119.1 million, was issued to SPS in exchange for the acquisition by NC Enterprises of certain NCE Subsidiaries and would be transferred to another Subsidiary in connection with the expected reorganization of NCE's nonutility interests.

Another note, having an outstanding principal balance of approximately $192.6 million, was issued to PSCo by NC Enterprises in exchange for its acquisition of New Century International, Inc., and would also be transferred to another Subsidiary in connection with the expected reorganization of NCE's nonutility interests.[6] The amounts of these notes would not count against the proposed intrasystem authorization limits described above.

Applicants also request authority to maintain in place through the Authorization Period the existing financing arrangements of NSP and its Subsidiaries, and any other guarantees and other credit arrangements entered into by NSP and its Subsidiaries prior to completion of the Merger and which remain in effect on the date the Merger is completed.[7] All of these borrowings

[6] According to Applicants, NCE was obligated under the terms of an order of the Commission dated May 14, 1998 (HCAR No. 26871) to notify the Commission if NC Enterprises did not prepay this note by December 31, 1999. The outstanding principal amount owed under the note has been reduced to its current balance from approximately $292.6 million, and Applicants now propose to prepay the note by December 31, 2004.

[7] These arrangements are as follows: Under the terms of comfort letters provided to lenders to certain NSP Subsidiaries, NSP will require that those Subsidiaries maintain specified interest coverage ratios. In addition, NSP has provided a comfort letter to a third party stating that it has approved an equity investment in its subsidiary Energy Masters International, Inc. (''EMI'') necessary to support certain performance guarantees made by EMI to the third party. Also, NSP Subsidiary NRG Energy, Inc., is the obligor on a $6.5 million promissory note to NSP, which will assign its rights under the note to New NSP

by NSP, intra-company financings, and guarantees with respect to obligations of NSP or the Subsidiaries will be included in the proposed aggregate limits described above.

In addition to these arrangements, NSP has entered into an indenture dated as of January 30, 1997, as supplemented, under which NSP has issued junior subordinated debentures to NSP Financing I, which has in turn issued trust preferred securities to investors. Payments by NSP on account of the junior subordinated debentures are used by NSP Financing I to make payments on account of the trust preferred securities, which are guaranteed by NSP. Upon consummation of the Merger, NSP's obligations under the guaranty and the debentures will be assigned to New NSP, but Xcel, as NSP's successor, will not be released from its liability under these instruments. Xcel requests authority to maintain in effect the above-described financing arrangement, but to not include these obligations in the applicable limitations described above.

E. Interest Hedge Transactions

Xcel and, to the extent not exempt under rule 52, the Subsidiaries request authority to enter into interest rate hedging transactions with respect to existing indebtedness (''Interest Rate Hedges''), subject to certain limitations and restrictions, in order to reduce or manage interest rate cost. Applicants state that Interest Rate Hedges would involve the use of financial instruments commonly used in today's capital markets, such as interest rate swaps, caps, collars, floors, and structured notes, or transactions involving the purchase or sale, including short sales, of U.S. Treasury Securities.

In addition, the Applicants request authority to enter into interest rate hedging transactions with respect to anticipated debt offerings, subject to certain limitations and restrictions. Anticipatory hedges would be utilized to fix and/or limit the interest rate risk associated with any new issuance through the use of various derivative or cash transactions, including, but not limited to structured notes, caps and collars.

following the Merger. Additionally, NSP is a borrower under three bank loans, related to its employee stock ownership plan, having an aggregate outstanding principal balance of $11.6 million as of December 31, 1999.

F. Financing Subsidiaries

Applicants request authority for Xcel and the Subsidiaries to acquire, directly or indirectly, the equity securities of one or more corporations, trusts, partnerships or other entities (''Financing Subsidiaries'') created specifically for the purpose of facilitating the financing of the authorized and exempt activities (including exempt and authorized acquisitions) of Xcel and the Subsidiaries, through the issuance of debt or preferred securities to third parties. The proceeds of any securities issuance by a Financing Subsidiary would be loaned, dividend or otherwise transferred to Xcel or the Subsidiary that established the Financing Subsidiary or to another entity that they may designate. The proceeds of any securities issuances by a Financing Subsidiary would count against any applicable proposed authorization limit of Xcel or the Subsidiary establishing that Financing Subsidiary as described above. Xcel or the Subsidiary may, if required, guarantee all or part of the obligations of any Financing Subsidiary under any securities issued by the Financing Subsidiary. Xcel or the Subsidiary also may enter into expense arrangements in respect of the obligations of any of these Financing Subsidiaries. However, the amount of any guarantee by Xcel or the Subsidiary would not be counted against the proposed authorization limit on intra-system financings and guaranties described above.

G. Intermediate Subsidiaries

Xcel and its Subsidiaries propose to invest in one or more Subsidiaries (''Intermediate Subsidiaries''), which would be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more EWGs or FUCOs, Rule 58 Subsidiaries, Exempt Telecommunications Companies (''ETCs'') or other Nonutility Subsidiaries authorized by order of the Commission. Investments in Intermediate Subsidiaries may take the form of any combination of the following: (i) Purchases of capital shares, partnership interests, member interests in limited liability companies, trust certificates or other forms of equity interests, (ii) capital contributions; (iii) open account advances with or without interest; (iv) loans; and (v) guarantees issued, provided or arranged in respect of the securities or other obligations of any Intermediate Subsidiaries.

In addition, Applicants request authority for Xcel to consolidate or otherwise reorganize all or any part of its direct and indirect ownership interests in Nonutility Subsidiaries, including the Intermediate Subsidiaries through which it may hold investment sin Nonutility Subsidiaries, and the activities and functions of these Subsidiaries, under one or more new Intermediate Subsidiaries, from time to time, without further Commission authority. In addition, as needed to accommodate these transactions and to provide for future issues, Applicants seek authority to change the terms of any wholly-owned Nonutility Subsidiary's authorized capital stock capitalization as deemed appropriate by Xcel or other immediate parent company.

H. Payment of Dividends Out of Capital and Unearned Surplus

Applicants state that there may be situations in which one or more Subsidiaries will have unrestricted cash available for distribution in excess of current and retained earnings. Accordingly, Applicants propose that the direct and indirect Nonutility Subsidiaries be permitted to pay dividends from time to time through the Authorization Period, out of capital and unearned surplus (including any revaluation reserve), to the extent permitted under applicable state law.

I. EWGs and FUCOs

As indicated above, NCE currently has authority to use the proceeds of the issuances of securities to invest up to 100% of its ''consolidated retained earnings,'' as defined in rule 53 under the Act, in EWGs and FUCOs. Assuming the Merger were effective as of December 31, 1999, aggregate investment in these entities would total approximately $0.9 billion, or 41.9%, of Xcel's consolidated retained earnings, as defined in rule 53. Applicants now request authority for Xcel to use financing proceeds to invest in EWGs and FUCOs in amounts that would constitute 100% of Xcel's consolidated retained earnings.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–16581 Filed 6–29–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42975; File No. SR–CHX–00–14]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Generic Listing Standards Applicable to Listing Portfolio Depository Receipts and Investment Company Units Pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934

June 22, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 3, 2000, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') 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 Exchange. The CHX filed Amendment No. 1 to the proposed rule change on May 5, 2000.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its listing standards for Investment Company Units (''ICUs'') (CHX Article XXVIII, Rule 24) and Portfolio Depositary Receipts (''PDRs'') (CHX Article XXVIII, Rule 25) to provide standards that permit listing and trading, or trading pursuant to unlisted trading privileges (''UTP''), of certain products pursuant to Rule 19b–4(e) under the Act.[4] The Exchange also proposes related amendments to CHX Article XX, Rule 22, its minimum trading variation rule. The text of the proposed rule change is available upon request from the Office of the Secretary, CHX or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX 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 Exchange has prepared summaries, set forth in section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently trades a number of securities pursuant to UTP under its listing standards for ICUs and PDRs.[5] These standards, found in CHX Artlcle XXVIII, Rule 24 and Rule 25, are similar to those maintained by other exchanges.[6] The Exchange's proposed amendments to CHX Article XXVIII, Rules 24 and 25 would permit it to list and trade ICUs and PDRs pursuant to Rule 19b–4(e) under the Act.[7] The Exchange believes that application of Rule 19b–4(e) to these securities will further the intent of that rule by allowing trading to begin in these securities, subject to the proposed generic standards, without the need for notice and comment and Commission approval. The Exchange believes that this new procedure has the potential to reduce time frame for bringing these securities to market or for trading them pursuant to UTP.

2. Generic Listing Criteria

The Exchange is proposing to implement generic listing criteria that are intended to ensure that a substantial portion of the weight of an index or portfolio underlying ICUs or PDRs is composed of securities with substantial market capitalization and trading volume. The proposed amendments to CHX Rules 24 and 25 provide that the Exchange may approve for trading pursuant to Rule 19b–4(e) a series of ICUs or PDRs if the components that, in the aggregate, account for at least 90% of the weight of the underlying index or portfolio have a minimum market value of at least $75 million. In addition, the component stocks representing at least 90% of the weight of the index or portfolio must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares.

Moreover, the most heavily weighted component stocks in an underlying index or portfolio cannot together exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot together exceed 65% of the weight of the index or portfolio. The index or portfolio must include a minimum of 13 stocks,[8] and all securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including The Nasdaq SmallCap Market). Finally, any series of ICUs or PDRs traded pursuant to generic standards must meet these eligibility criteria as the date of the initial deposit of securities and cash into the trust or fund.[9]

Under the proposed amendments to CHX Rules 24 and 25, the underlying index or portfolio will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology. In addition, if the index is maintained by a broker-dealer, the broker-dealer must erect a ''fire wall'' around the personnel who have access to information concerning changes and adjustments to the index or portfolio, and the index must be calculated by a third party who is not a broker-dealer.

The current index value must be disseminated every 15 seconds over the Consolidated Tape Association's Network B.[10] Additionally, the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Ellen Neely, Vice President and General Counsel, CHX, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), SEC, dated May 4, 2000 (''Amendment No. 1''). Amendment No. 1 adds a product description delivery requirement for certain series of Investment Company Units (''ICUs'') and clarifies the timing for compliance with eligibility criteria relating to indexes underlying a series of Portfolio Depository Receipts (''PDRs''). Amendment No. 1 is more fully described in Section II below.

[4] 17 CFR 240.19b–4(e). Rule 19b–4(e) permits self-regulatory organizations (''SROs'') to list and trade new derivatives products that comply with existing SRO trading rules, procedures, surveillance programs and listing standards, without submitting a proposed rule change under Section 19(b). *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[5] *See* Securities Exchange Act Release No. 37589 (August 21, 1996), 61 FR 44370 (August 28, 1996) (ICUs) and Securities Exchange Act Release No. 39076 (September 15, 1997), 62 FR 49270 (September 19, 1997) (PDRs).

[6] *See* American Stock Exchange (''Amex'') Rules 1000 (Portfolio Depositary Receipts) and 1000A (Index Fund Shares).

[7] *See supra* note 4.

[8] Thirteen stocks is the minimum number to permit qualification as a regulated investment company under Subchapter M of the Internal Revenue Code. Under Subchapter M of the Internal Revenue Code, for a fund to qualify as regulated investment company the securities of a single issuer can account for no more than 25% of a fund's total assets, and at least 50% of a fund's total assets must be comprised of cash (including government securities) and securities of single issuers whose securities account for less than 5% of the fund's total assets.

[9] *See* Amendment No. 1, *supra* note 3.

[10] The CHX represents that it understands that the information described in this section will be

Reporting Authority must disseminate for each series of ICUs or PDRs an estimate, updated every 15 seconds, of the value of a share of each series. This estimate may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

A minimum of 100,000 shares of a series of ICUs or PDRs must be outstanding at the time trading begins. The Exchange represents that it believes that this minimum number is sufficient to establish a liquid Exchange market at the start of trading. The minimum trading variation for a series of PDRs must be 1/64 of $1.00 and, for ICUs, 1/16, 1/32 or 1/64 of $1.00, as determined by the Exchange for a specific series.

The Exchange will implement written surveillance procedures for the PDRs and the ICUs that it trades pursuant to Rule 19b–4(e). In addition, the Exchange will comply with the recordkeeping requirements of Rule 19b–4(e), and will file Form 19b–4(e) for each series of ICUs or PDRs within five business days of commencement of trading.[11]

The provisions of CHX Rules 22 *et seq.*, 24 *et seq.* or 25 *et seq.* will apply to all series of PDRs and ICUs listed under Rule 19b–4(e). In addition to the requirements of amended CHX Rules 22, 24 and 25, PDRs and ICUs will be subject to Exchange procedures and rules, discussed below, comparable to those applied to existing PDRs and ICUs.[12]

ICUs and PDRs are subject to the Exchange's rule relating to trading halts due to extraordinary market volatility (CHX Article IX, Rule 10A) and the Exchange's rule that provides discretion to Exchange officials to halt trading in specific securities under certain circumstances (CHX Article IX, Rule 10(b)). In exercising the discretion described in CHX Article IX, Rule 10(b), appropriate Exchange officials may consider a variety of factors, including the extent to which trading is not occurring in a stock underlying the index or portfolio and whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Further, the Exchange will issue a Notice to Members for each series to be listed pursuant to Rule 19b–4(e). The notice will describe the characteristics of the securities and will inform members of any obligation to deliver a written product description or prospectus, as applicable, to purchasers of ICUs or PDRs. In addition, the notice will inform members of their responsibilities under Article VIII, Rule 25 (''Business Conduct'') in connection with customer transactions in these securities.

The proposal also requires members and member organizations to provide purchasers of a series of ICUs with a product description of the terms and characteristics of such securities in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction is such series is delivered to the purchaser. This requirement applies only if the particular series has been granted relief from the prospectus delivery requirements of section 24(d) off the Investment Company Act of 1940.[13] Additionally, members and member organizations are required to include the product description with any sales materials relating to a series of ICUs that are provided to the public. Any other written materials provided to customers by a member or member organization referring to a series of ICUs must include a statement relating to the product description, in substantially the form set forth in the proposed amendment to CHX Rule 24.

The proposal also provides that a member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of ICUs for such account will be deemed to constitute agreement by the non-member to make such product description available to its customers on the same terms as are directly applicable to members and member organizations under the proposed amendment to CHX Rule 24. Finally, the proposal provides that a member or member organization must provide a prospectus for a particular series of ICUs upon the customer's request.

3. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act[14] in general, and in particular, with section 6(b)(5),[15] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition. The CHX believes that the proposed rule change will encourage competition among markets by allowing more than one exchange to list and trade the products described in the proposed rule change pursuant to Rule 19b–4(e).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not receive any written 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–00–14 and should be submitted by July 21, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) of the Act.[16] Specifically, the Commission finds that the CHX proposal to establish generic standards

disseminated by or through the primary exchange or another entity working with that exchange.

[11] 17 CFR 240.19b–4(e).

[12] Telephone conversation between Ellen Neely, Vice President and General Counsel, CHX, and Melinda Diller, Attorney, Division, SEC, on June 13, 2000.

[13] 15 U.S.C. 80a–24(d).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(5).

to permit the trading of PDRs and ICUs pursuant to Rule 19b–4(e) furthers the intent of that rule by facilitating commencement of trading in these securities without the need for notice and comment and Commission approval under section 19(b) of the Act. Thus, by establishing generic standards, the proposal should reduce the Exchange's regulatory burden, as well as benefit the public interest, by enabling the Exchange to bring qualifying products to the market mre quickly. Accordingly, the Commission finds that the Exchange's proposal will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.[17]

In general, ICUs represent an interest in a registered investment company that holds securities based on, or representing an interest in, an index or portfolio of securities. The Exchange currently trades a number of securities pursuant to UTP under its ICU and PDR listing standards.[18] The Commission has also approved amendments to CHX Rule 24 to permit the trading, pursuant to UTP, of ICUs based on certain Morgan Stanley Capital International Indices (''WEBS℠'') and nine series of Select Sector SPDRs ℠.[19]

PDRs represent interests in a unit investment trust that holds securities which comprise an index or portfolio. Each trust is intended to provide investors with an instrument that closely tracks the underlying securities index or portfolio, that trades like a share of common stock, and that pays holders a periodic cash payment proportionate to the dividends paid, on the underlying portfolio of securities, less certain expenses, as described in the applicable trust prospectus. The Commission has approved rule proposals that allow the Exchange to trade, pursuant to UTP, PDRs based on the Standard and Poor's 500 Index (''SPDRs®'') and the S&P MidCap 400 Index™ (''MidCap SPDRs''™.[20]

Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that include the new derivative securities product and the SRO has a surveillance program for the product class.[21]

As noted above, the Commission has previously approved CHX Rules 24 *et seq.* and 25 *et seq.* that permit the listing and trading of ICUs and PDRs. In approving these securities for trading, the Commission considered the structure of these securities, their usefulness to investors and to the markets, and the CHX rules that govern their trading. Moreover, the Exchange has separately filed proposed rule changes pursuant to Rule 19b–4 for each of the series of ICUs or PDRs currently trading on the Exchange.

The Commission's approval of the proposed generic listing standards for these securities will allow those series of PDRs and ICUs that satisfy those standards to start trading under Rule 19b–4(e), without the need for notice and comment and Commission approval. The Exchange's ability to rely on Rule 19b–4(e) for these products potentially reduces the time frame for bringing these securities to the market or for permitting the trading of these securities pursuant to UTP, and thus enhances investors' opportunities. The Commission notes that while the proposal reduces the Exchange's regulatory burden, the Commission maintains regulatory oversight over any products listed under the generic standards through regular inspection oversight.

The Commission previously concluded that PDRs and ICUs trading under the existing Exchange rules would allow investors to: (1) Respond quickly to market changes through intra day trading opportunities; (2) engage in hedging strategies similar to those used by institutional investors; and (3) reduce transactions costs for trading a portfolio of securities.[22] The Commission believes, for the reasons set forth below, that the product classes that satisfy the proposed generic standards for PDRs and ICUs should produce the same benefits to investors.

The Commission also finds that the proposal contains adequate rules and procedures to govern the trading of PDRs and ICUs under Rule 19b–4(e). All series of PDRs and ICUs listed under the generic standards will be subject to the full panoply of CHX rules and procedures that now govern the trading of existing PDRs and ICUs on the Exchange or pursuant to UTP. Accordingly, any new series of PDRs and ICUs listed and traded under Rule 19b–4(e) will be subject to CHX rules governing the trading of equity securities, including, among others, rules and procedures governing trading halts, disclosures to members, responsibilities of the specialist, account opening and customer suitability requirements, the election of a stop or limit order, and margin.

In addition, the CHX has developed specific listing criteria for series of PDRs or ICUs qualifying for Rule 19b–4(e) treatment that will help to ensure that a minimum level of liquidity will exist to allow for the maintenance of fair and orderly markets. Specifically, the proposed generic listing standards require that a minimum of 100,000 shares of a series of PDRs or ICUs is outstanding as of the start of trading. The Commission believes that this minimum number of securities is sufficient to establish a liquid Exchange market at the commencement of trading.

The Commission believes that the proposed generic listing standards ensure that the securities composing the indexes and portfolios underlying the ICUs and PDRs are well capitalized and actively traded. These capitalization and liquidity criteria serve to prevent fraudulent or manipulative acts and are therefore consistent with section 6(b)(5) of the Act.

In addition, as previously noted, all series of PDRs and ICUs listed or traded under the generic standards will be subject to the Exchange's existing continuing listing criteria. This requirement allows the CHX to consider the suspension of trading and the delisting of a series if an event occurs that makes further dealings in such securities inadvisable. The Commission believes that this will give the CHX flexibility to delist PDRs or ICUs if circumstances warrant such action.

[17] *Id.* In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] *See supra* note 5. These listing standards are similar to those maintained by other exchanges. *See, e.g.,* Amex Rules 1000 (Portfolio Depositary Receipts) and 1000A (Index Fund Shares).

[19] *See* Securities Exchange Act Release No. 39117 (September 22, 1997), 62 FR 50973 (September 29, 1997) (WEBS); Securities Exchange Act Release No. 40950 (Janary 15, 1999), 64 FR 3730 (January 25, 1999) (Select Sector SPDRs). ''WEBS'' is a service mark of Morgan Stanley Group, Inc. ''Select Sector SPDR'' is a service mark of The McGraw-Hill Companies, Inc.

[20] *See* Securities Exchange Act Release No. 39076 (September 15, 1997), 62 FR 49270 (September 19, 1997). ''S&P Midcap 400 Index,'' ''MidCap SPDRs'' and ''SPDRs'' are trademarks of The McGraw-Hill Companies, Inc.

[21] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[22] *See* Securities Exchange Act Release No. 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000)(approving SR–Amex–00–14); Securities Exchange Act Release No. 42542 (March 17, 2000), 65 FR 16437 (March 28, 2000) (Noticing SR–Amex–00–14).

Furthermore, the Commission finds that the Exchange's proposal to trade PDRs in minimum fractional increments of 1/64 of $1.00 and ICUs in increments of 1/16, 1/32, or 1/64 of 1.00 is consistent with the Act. The Commission believes that such trading should enhance market liquidity, and should promote more accurate pricing, tighter quotations, and reduced price fluctuations, all of which benefit the investor. The Commission also believes that such trading should allow customers to receive the best possible execution of their transactions in the PDRs or ICUs, thereby protecting customers and the public interest consistent with section 6(b)(5) of the Act.[23]

The Exchange represents that the Reporting Authority will disseminate for each series of PDRs or ICUs an estimate, updated every 15 seconds, of the value of a share of each series. The Exchange further represents that the information that is reported will be disseminated by or through the primary exchange or another entity working with the exchange, when the CHX trades one of these products pursuant to UTP. The Commission believes that the information the Exchange proposes to have disseminated will provide investors with timely and useful information concerning the value of each series.

The CHX has developed surveillance procedures for PDRs and ICUs listed under the generic standards that incorporate and rely upon existing CHX surveillance procedures governing PDRs, ICUs, and equities. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading PDRs and ICUs under the generic standards. Accordingly, the Commission believes that the rules governing the trading of such securities provide adequate safeguards to prevent manipulative acts and practices and to protect investors and the public interest, consistent with section 6(b)(5) of the Act.[24] The Exchange further represents that it will file Form 19b–4(e) with the Commission within five business days of commencement of trading a series under the generic standards, and will comply with all Rule 19b–4(e) recordkeeping requirements.

The Commission also notes that certain concerns are raised when a broker-dealer is involved in both the development and maintenance of a stock index upon which a product such as PDRs or ICUs is based. The proposal requires that, in such circumstances, the broker-dealer must have procedures in place to prevent the misuse of material, non-public information regarding changes and adjustments to the index and that the index value be calculated by a third party who is not a broker-dealer. The Commission believes that these requirements should help address concerns raised by a broker-dealer's involvement in the management of such an index.

Finally, the Commission believes that the Exchange's proposal will ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading PDRs and ICUs. Members and member organizations will be required to provide to all purchasers of ICUs or PDRs a written description of the terms and characteristics of these securities, to include their product description in sales materials provided to customers or the public, to include a specific statement relating to the availability of the description in other types of materials distributed to customer or the public, and to provide a copy of the prospectus, when requested by a customer. The proposal also requires a member or member organization carrying an omnibus account for a non-member broker-dealer, to notify the non-member that execution of an order to purchase an ICU or PDR constitutes an agreement by the non-member to provide the product description to its customers.

The Commission also notes that upon the initial listing, or trading pursuant to UTP, of any PDRs or ICUs under the generic standards, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this particular type of security. The circular also will note the Exchange members' prospectus or product description delivery requirements, and highlight the characteristics of purchases in a particular series of PDRs or ICUs. The circular also will inform members of their responsibilities under CHX Article VIII, Rule 25 in connection with customer transactions in these securities. The Commission believes that these requirements ensure adequater disclosure to investor about the terms and characteristics of a particular series and is consistent with section 6(b)(5) of the Act.[25]

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** pursuant to section 19(b)(2) of the Act. The Commission notes that the proposed rule change is based on the generic listing standards in Amex Rule 1000 *et seq.* (PDRs) and 1000A *et seq.* (Index Fund Shares), which the Commission previously approved after soliciting public comment on the proposal pursuant to section 19(b)(1) of the Act.[26] The Commission does not believe that the proposed rule changes raises novel regulatory issues that were not addressed in the Amex filing. Accordingly, the Commission believes it is appropriate to permit investors to benefit from the flexibility afforded by these new instruments by trading them as soon as possible. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) of the Act,[27] to approve the proposal on an accelerated basis.

V. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[28] that the proposed rule change (SR–CHX–00–14) and Amendment No. 1 thereto, are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–16582 Filed 6–29–00; 8:45 am]

BILLING CODE 8010–01–M

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78f(b)(5).

[26] *See supra* note 22.

[27] 15 U.S.C. 78s(b)(5).

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3351]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Van Gogh to Mondrian: Dutch Works on Paper''

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition ''Van Gogh to Mondrian: Dutch Works on Paper,''

imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, Boston, MA from on or about July 25, 2000 to on or about November 5, 2000, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–5997). The address is U.S. Department of State, SA–44, 301 4th Street, S.W., Room 700, Washington, D.C. 20547–0001.

Dated: June 23, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 00–16609 Filed 6–29–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Four Current Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) the FAA invites public comment on four currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before August 29, 2000.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: The FAA solicits comments on the following four current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection. Following are short synopses of the information collection activities which will be submitted to OMB for review and renewal:

1. 2120–0033, Representatives of the Administrator, FAR 183. Title 49, U.S.C. 44702, authorizes appointment of properly qualified private persons to be representatives of the Administrator for examining, testing, and certifying airmen for the purpose of issuing those individuals airmen certificates. The information collected is used to determine eligibility of the representatives. There is an estimate of 7,000 respondents who will take an hour or less to prepare the appropriate application form for the job for which they are applying.

2. 2120–0607, Pilot Records Improvement Act of 1996. Section 502 of the Pilot Records Improvement Act of 1996, Public Law 104–264, requires that all air carriers (as defined in 49 U.S.C. 40102(a)(2)), request and receive FAA records, air carrier and other records, and National Driver Register records before hiring an individual as a pilot. An air carrier may use FAA forms 8060–10, and 8060–11, and the National Drivers Registry request form. The estimates in the past have been an estimated 21,000 respondents, with a burden of approximately 6,000 hours annually.

3. 2120–0611, AST Customer Service Survey. The FAA conducts surveys to obtain industry input on customer service standards that were developed by the FAA's Office of the Associate Administrator for Commercial Space Transportation (AST) and distributed to industry customers. The respondents will be an estimated 50 representatives of the U.S. commercial launch industry and other industry representatives from related industries. The data collected will be analyzed by AST to determine the quality of services provided by AST to its industry and government customers. The estimated annual burden is 50 hours.

4. 2120–0618, Overflight Bulling and Collections Customer Information Form. Information will be collected from air carriers that transit U.S. controlled airspace but do not take off or land in the U.S. This activity is commonly known as overflights. The information obtained from the customer information form will be used to properly identify and accurately bill carriers subject to overflight changes as well as obtain a name, telephone number and fax number for contact purposes. The respondents are an estimated 300–600 air carriers, for a total estimated burden of 50 hours.

Issued in Washington, DC, on June 26, 2000.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 00–16665 Filed 6–29–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–21]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Ch. I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 24, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of

Rulemaking (ARM–1), Federal Avaiation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on June 20, 2000.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No: 29909.

Petitioner: KaiserAir, Inc.

Section of the FAR Affected. 14 CFR 135.153(a).

Description of Relief Sought: To permit KaiserAir to operate one Gulfstream American G–1159A airplane (Registration No. N740SS, Serial No. 369) equipped with a Sperry (Honeywell) VA–100 Voice Advisory/Ground Proximity System rather than an approved ground proximity warning system until the third quarter of 2000.

Docket No.: 29953.

Petitioner: Simulator Training, Inc.

Section of the FAR Affected: 14 CFR 61.63(e)(4)(i) and 61.157(g)(3)(i).

Description of Relief Sought: To allow STI to use a Level a Level B flight simulator rather than a Level C or Level D flight simulator for the initial portion of the required training and testing for an airline transport pilot certificate with an airplane category, class, and type rating, and additional aircraft ratings.

Docket No.: 29990.

Petitioner: FlightSafety Boeing Training International.

Section of the FAR Affected: 14 CFR 142.53.

Description of Relief Sought: To permit FlightSafety to designate simulator instructors who instruct exclusively under 14 CFR part 61 within the scope of part 142 in a flight simulator that the Administrator has approved for all training and testing for the airline transport pilot certification test, aircraft type rating test, or both, without meeting the requirement to complete actual airplane flight time or line observation an approved line-oriented flight training program.

Docket No.: 30011.

Petitioner: Ameriflight, Inc.

Section of the FAR Affected: 14 CFR 135.243(c).

Description of Relief Sought: To permit Ameriflight to (1) allow its pilots in command (PICs) of single-engine piston-powered airplanes to operate under instrument flight rules with a minimum of 800 hours of flight time, including 400 hours of cross-country flight time and 75 hours of night flight time, in lieu of the flight-time requirements of § 135.243(c)(2), and (2) allow its PICs of multi-engine piston-powered airplane with maximum takeoff weights not greater than 8,000 pounds to operate under instrument flight rules with a minimum of 800 hours of flight time but otherwise in compliance with § 135.243(c)(2).

Dispositions of Petitions

Docket No.: 25242.

Petitioner: Experimental Aircraft Association.

Section of the FAR Affected: 14 CFR 61.58(a)(2) and 91.5.

Description of Relief Sought/Disposition: To permit EAA members to complete an approved training course in lieu of a pilot proficiency check. The exemption applies to training courses for the following aircraft: Boeing B–17; North American B–25; Douglas B–26, C–47, and C–54; Consolidated PBY; Martin PBM; Grumman S–2–F; Curtiss C–46; and Ford Tri-Motor. *Grant, 06/02/2000, Exemption No. 4941F.*

Docket No.: 29012.

Petitioner: Continental Airlines, Inc.

Section of the FAR Affected: 14 CFR 121.434(c)(1)(ii).

Description of Relief Sought/Disposition: To permit Continental to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command who is completing the initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing, subject to certain conditions and limitations. *Grant, 06/02/2000, Exemption No. 29012.*

Docket No.: 29401.

Petitioner: Hollingsead International, Inc.

Section of the FAR Affected: 14 CFR 25.855(a), 25.857(e), and 25.1447(c)(1).

Description of Relief Sought/Disposition: To permit supplemental type certification of Airbus A300 airplane models B2–1A, B2–1C, B2K–3C, B2–203, B4–103, B4–2C and B4–203 modified to include a main deck Class E cargo compartment, to provide accommodations for up to a maximum of 16 supernumerary occupants acting as grooms to attend to live-animal cargo, in a Class E cargo compartment. *Grant, 06/06/2000, Exemption No. 7234.*

Docket No.: 30006.

Petitioner: Michigan City Aviators, Inc.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/Disposition: To permit MCA to conduct local sightseeing flights at Michigan City Airport, Indiana, for a pancake breakfast on July 8, 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 06/06/2000, Exemption No. 7232.*

Docket No.: 30060.

Petitioner: New London Airport.

Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/Disposition: To permit NLA to conduct local sightseeing flights at New London Airport, Virginia, for an annual fly-in on June 4, 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 06/02/2000, Exemption No. 7233.*

[FR Doc. 00–16666 Filed 6–29–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aging Transport Systems Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aging Transport Systems Rulemaking Advisory Committee.

DATES: The meeting will be held July 19–20, 2000, beginning at 9 a.m. on July 19. Arrange for oral representations by July 12.

ADDRESSES: The meeting will be at the Bessie Coleman Conference Center, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Terry K. Stubblefield, Office of Rulemaking, ARM–208, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7624, FAX (202) 267–5075.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a meeting of the Aging Transport Systems Rulemaking Advisory Committee in the Bessie Coleman Conference Center, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC.

The agenda will include:

Day 1

- Opening remarks.
- Working group reports, review and vote.

- Task 1 (Sampling Inspection of the fleet) and Task 2 (Review of fleet service history) review and vote on recommendations
- Task 3 (Improvement of maintenance criteria) review
- Task 4 (Review and update standard practices for wiring) review and vote on recommendations
- Task 5 (Review air carrier and repair station training programs) review
- Determine action plan related to mixing wire types in bundles; all presentations optional

Day 2

- Status of arc fault circuit interrupter development by Industry Contractors
- Status of arc fault circuit interrupters program
- Overview of circuit breaker research
- Discussion of SDR Analysis and Normalization on Non-electric Systems
- Intrusive inspections status report

Attendance is open to the interested public but will be limited to the space available. The public must make arrangements by July 12, 2000, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 20 copies to the Executive Director, or by bringing the copies to him at the meeting. Public statements will only be considered if time permits. In addition, sign and oral interpretation as well as a listening device can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on June 26, 2000.

Anthony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 00–16667 Filed 6–29–00; 8:45 am]

BILLING CODE 4916–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application #00–06–C–00–STL To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lambert-St. Louis International Airport, St. Louis, MO

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lambert-St. Louis International Airport under the provisions of the Aviation Safety and Capacity Expension Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Avialtion Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 31, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address; Federal Aviation Administration, Central Region, Airports Division, 901 Locust, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Col. Leonard L. Griggs, Jr., Director of Airports, Lambert-St. Louis International Airport, at the following address: City of St. Louis Airport Authority, PO Box 10212, St. Louis, Missouri 63145.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of St. Louis Airport Authority, Lambert-St. Louis International Airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 901 Locust, Kansas City, MO 64106, (816) 329–2641. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Lambert-St. Louis International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 16, 2000, the FAA determined that the application to impose and use the revenue from PFC submitted by the City of St. Louis Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 28, 2000.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: March, 2002.

Proposed charge expiration date: July 2018.

Total estimated PFC revenue: $847,915,232.

Brief description of proposed project(s): Real Property Acquisition for Airport Expansion (Phase 2); Carrollton Schools Replacement Facility; Airport Development Program Management Services (Phase 2); Site Development and Roadway Infrastructure.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Lambert-St. Louis International Airport.

Issued in Kansas City, Missouri on June 16, 2000.

George A. Hendon,

Manager, Airports Division Central Region.

[FR Doc. 00–16663 Filed 6–29–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In May 2000, there were eight applications approved. This notice also includes information on one application, approved in April 2000, inadvertently left off the April 2000 notice. Additionally, nine approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L 101–508) and part 158 of the Federal Aviation Regulations (14 (CFR part 158). This notice is published pursuant to paragraph (d) of § 158.29.

PFC Applications Approved

Public Agency: Tulsa airport Authority, Tulsa, Oklahoma.

Application Number: 00–04–C–TUL.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $13,500,000.

Earliest Charge Effective Date: July 1, 2000.

Estimated Charge Expiration Date: July 1, 2003.

Class of Air Carriers Not Required to Collect PFC's: None

Brief Description of Project Approved for Collection and Use:

Terminal security and flight information display improvements.

Conduct noise mitigation.

Terminal interior improvements.

Airfield drainage improvements.

Airfield snow removal equipment (SRE) building improvements.

Terminal access improvements.

Decision Date: April 27, 2000.

FOR FURTHER INFORMATION CONTACT: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

Public Agency: City and Borough of Juneau, Juneau, Alaska.

Application Number: 00–02–C–00–JNU.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in this Decision: $357,820.

Earliest Charge Effective Date: August 1, 2000.

Estimated Charge Expiration Date: July 1, 2001.

Class of Air Carriers not Required to Collect PFC's: (1) All air carriers operating between Juneau International Airport (JNU) and Chatham, Alaska; (2) all air carriers operating between JNU and Funter Bay, Alaska; (3) all air carriers operating between JNU and Gustavus, Alaska; (4) all air carriers operating between JNU and Petersburg, Alaska; (5) all air carriers operating between JNU and Wrangell, Alaska; (6) all air carriers operating between JNU and Yakutat, Alaska; (7) all air carriers operating between JNU and Cordova, Alaska; and (8) all air carriers enplaning 1,000 or less passengers annually at JNU.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the eight class listed above accounts for less than 1 percent of the total annual enplanments at JNU and is approved. For referenced exclusions (1) through (7) above, the FAA's approval is based on changes in legislation as described below and under the limitations set forth under § 158.9(a), which precludes imposition of a PFC on any passenger on any flight to an eligible point on an air carrier that receives essential air service (EAS) compensation on that route. Subsequent to the filing of this application, a provision of the ''Wendell H. Ford Aviation Investment and Reform Act for the 21st Century'' (Ford Act), Pub. L. 106–181 (April 5, 2000), amended 49 U.S.C. 40117(e)(2) to add the following, ''A passenger facility fee may not be collected from a passenger in Alaska aboard an aircraft having a seating capacity of less than 60 passengers.'' The carriers operating the EAS subsidized routes identified in items (1) through (7) above are exempt under § 158.9(a). The remaining carriers operating on those routes fall under the new provision of the Ford Act described above and, therefore, are also exempt.

Brief Description of Projects Approved for Collection and Use:

Acquire security access control system.

Acquire SRE.

Improve airport access roads.

Acquire airport security vehicle.

Relocate automated surface observation system.

Acquire SRE.

Brief Description of Disapproved Project: Terminal carpet rehabilitation.

Determination: Disapproved. The FAA considers this a maintenance item and, under paragraph 501 or FAA Order 5100.38A, Airport Improvement Program Handbook (October 24, 1989), maintenance projects are specifically ineligible. Therefore, this project doesn't meet the requirements of § 158.15 (b)(1).

Decision Date: May 5, 2000.

FOR FURTHER INFORMATION CONTACT: Debbie Roth, Alaska Region Airports Division, (907) 271–5443.

Public Agency: Metropolitan Washington Airports Authority, Alexandria, Virginia.

Application Number: 98–03–C–00–IAD.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $29,423,619.

Earliest Charge Effective Date: April 1, 2011.

Estimated Charge Expiration Date: December 1, 2011.

Class of Air Carriers Not Required to Collect PFC's: Part 135 on-demand air taxis, both fixed wing and rotary.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Washington Dulles International Airport.

Brief Description of Project Approved for Collection and Use: Pedestrian connector to north flank garage.

Decision Date: May 5, 2000.

FOR FURTHER INFORMATION CONTACT: Terry Page, Washington Airports District Office, (703) 661–1370.

Public Agency: Metropolitan Washington Airports Authority, Alexandria, Virginia.

Application Number: 98–04–C–00–DCA.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $73,203,813.

Earliest Charge Effective Date: May 1, 2003.

Estimated Charge Expiration Date: November 1, 2006.

Class of Air Carriers Not Required to Collect PFC's: On-demand air taxis, both fixed wing and rotary.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Ronald Reagan Washington National Airport (DCA).

Brief Description of Projects Approved for Collection at DCA and Use at DCA:

Regional carrier concourse.

Terminal A apron rehabilitation.

Terminal A building rehabilitation.

Terminal connector expansion.

Brief Description of Project Approved for Collection at DCA and Use at Washington Dulles International Airport (IAD): IAD Concourse A rehabilitation.

Decision Date: May 5, 2000.

FOR FURTHER INFORMATION CONTACT: Terry Page, Washington Airports District Office, (703) 661–1370.

Public Agency: City of McAllen, Texas.

Application Number: 00–02–C–00–MFE.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $2,424,500.

Earliest Charge Effective Date: January 1, 2002.

Estimated Charge Expiration Date: September 1, 2004.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Runway 31 approach safety area improvements.

Passenger lift device.

Acquire aircraft rescue and firefighting (ARFF) vehicle.

Construct blast pads.

Master plan update/terminal area study.

PFC administrative costs.

Decision Date: May 12, 2000.

FOR FURTHER INFORMATION CONTACT: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

Public Agency: City of La Crosse, Wisconsin.

Application Number: 00–05–C–00–LSE.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $689,208.

Earliest Charge Effective Date: September 1, 2000.

Estimated Charge Expiration Date: April 1, 2003.

Class of Air Carriers Not Required to Collect PF's: None.

Brief Description of Projects Approved for Collection and Use:

Install approach light system.

Master plan update.

Reconstruct runway 18/36 phases 2 and 3.

Install ground level passenger loading bridges.

PFC administration.

Decision Date: May 12, 2000.

FOR FURTHER INFORMATION CONTACT: Sandra E. Depottey, Minneapolis Airports District Office, (612) 713–4363.

Public Agency: City of Idaho Falls, Idaho.

Application Number: 00–03–C–00–IDA.

Application Type: Impose and use a FPC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $2,640,000.

Earliest Charge Effective Date: November 1, 2000.

Estimated Charge Expiration Date: September 1, 2009.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Project Approved for Collection and Use: Terminal renovation and expansion.

Decision Date: May 15, 2000.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: City of Twin Falls, Idaho.

Application Number: 00–02–C–00–TWF.

Application Type: Impose and use a FPC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $483,040.

Earliest Charge Effective Date: July 1, 2002.

Estimated Charge Expiration Date: January 1, 2007.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators utilizing aircraft having a seating capacity of less than 20 passengers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Joslin Field-Magic Valley Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Reconstruction of northwest apron.

Airport signing system update.

ARFF vehicle and equipment.

Terminal building auto parking and lighting.

Apron expansion.

Medium intensity taxiway lighting system.

ARFF building.

Runway 7/25 cable system rehabilitation and wind cone replacement.

Rehabilitation of runway 7/25.

Decision Date: May 15, 2000.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: County of Marquette, Marquette, Michigan.

Application Number: 00–05–C–00–SAW.

Application Type: Impose and use a FPC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $369,235.

Earliest Charge Effective Date: June 1, 2000.

Estimated Charge Expiration Date: November 1, 2002.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Access road to terminal.

Part 77 grading.

Furnish and install very high frequency omni-directional radio range and distance measuring equipment.

Rehabilitate terminal apron.

Hangar rehabilitation.

Terminal area lighting.

Groove runway 1/19.

Joint repairs on runway 1/19.

Taxiway relighting.

Taxiway rehabilitation and construction.

Instrument landing system paving.

Renovate building 600.

Environmental assessment for north access road and runway 13/31.

North access road (preliminary design only).

Decision Date: May 26, 2000.

FOR FURTHER INFORMATION CONTACT: Jon Gilbert, Detroit Airports District Office, (734) 487–7281.

AMENDMENTS TO PFC APPROVALS

Amendment no., city and state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
98–03–C–02–CRW, Charleston, WV	04/03/00	$662,687	$762,090	02/01/01	01/01/01
98–05–U–01–CRW, Charleston, WV	04/03/00	NA	NA	02/01/01	01/01/01
98–03–C–01–BPT, Beaumont, TX	04/13/00	667,020	1,144,739	11/01/00	12/01/03
92–01–I–06–PHL, Philadelphia, PA	04/28/00	104,050,000	103,824,405	07/01/11	07/01/11
93–02–U–01–PHL, Philadelphia, PA	04/28/00	NA	NA	07/01/11	07/01/11
98–01–C–01–GLH, Greenville, MS	05/04/00	57,897	66,581	07/01/00	08/01/00
97–01–C–01–AZO, Kalamazoo, MI	05/11/00	3,276,183	1,594,993	12/01/01	06/01/00
92–01–C–01–SBS, Steamboat Springs, CO	05/15/00	1,887,337	159,576	04/01/12	06/01/97
98–02–C–01–EAT, Wenatchee, WA	05/15/00	307,000	404,184	10/01/00	11/01/00

Issued in Washington, DC on June 26, 2000.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 00–16664 Filed 6–29–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6586; Notice 02]

RIN 2127–AH76

Final Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of final theft data.

SUMMARY: This document publishes the final data on thefts of model year (MY) 1998 passenger motor vehicles that occurred in calendar year (CY) 1998. The final 1998 theft data indicate a decrease in the vehicle theft rate when compared to the theft rate experienced in CY/MY 1997. The final theft rate for MY 1998 passenger vehicles stolen in calendar year 1998 (2.53 thefts per thousand vehicles produced) decreased by 17.05 percent from the theft rate for CY/MY 1997 vehicles (3.05 thefts per thousand vehicles produced). Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data and publish the information for review and comment.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR Part 541. The standard specifies performance requirements for inscribing and affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data and publish the data for review and comment. To fulfill this statutory mandate, NHTSA has published theft data annually beginning with MYs 1983/84. Continuing to fulfill the § 33104(b)(4) mandate, this document reports the final theft data for CY 1998, the most recent calendar year for which data are available.

In calculating the 1998 theft rates, NHTSA followed the same procedures it used in calculating the MY 1997 theft rates. (For 1997 theft data calculations, see 64 FR 41183, July 29, 1999.) As in all previous reports, NHTSA's data were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a government system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

The 1998 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 1998 vehicles of that line stolen during calendar year 1998 by the total number of vehicles in that line manufactured for MY 1998, as reported to the Environmental Protection Agency (EPA).

The final 1998 theft data show a decrease in the vehicle theft rate when compared to the theft rate experienced in CY/MY 1997. The final theft rate for MY 1998 passenger vehicles stolen in CY 1998 decreased to 2.53 thefts per thousand vehicles produced, a decrease of 17.05 percent from the rate of 3.05 thefts per thousand vehicles experienced by MY 1997 vehicles in CY 1997. For MY 1998 vehicles, out of a total of 196 vehicle lines, 41 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991. (*See* 59 FR 12400, March 16, 1994.) Of the 41 vehicle lines with a theft rate higher than 3.5826, 35 are passenger car lines, 6 are multipurpose passenger vehicle lines, and none are light-duty truck lines.

On Tuesday, February 8, 2000, NHTSA published the preliminary theft rates for CY 1998 passenger motor vehicles in the **Federal Register** (65 FR 6250). The agency tentatively ranked each of the MY 1998 vehicle lines in descending order of theft rate. The public was requested to comment on the accuracy of the data and to provide final production figures for individual vehicle lines. The agency received written comments from General Motors Corporation (GM) and Volkswagen of America, Inc. (VW). The agency used all written comments to make the necessary adjustments to its data. As a result of the adjustments, some of the final theft rates and rankings of vehicle lines changed from those published in the February 2000 notice. In its comments, Volkswagen informed the agency that the production volume for the Audi A4 vehicle line was incorrect. In response to this comment, the production volume for the Audi A4 has been corrected and the final theft list has been revised accordingly. As a result of the correction, the Audi A4 previously ranked No. 163 with a theft rate of 0.8669 is now ranked No. 168 with a theft rate of 0.7147.

GM informed the agency that the production volumes for the Chevrolet Metro and Chevrolet Tracker were incorrect. Upon further review of the production volumes, it was later confirmed by GM that the volumes listed by the agency for the two lines were not in error. Therefore, the production volume and the theft rate for the Chevrolet Metro and Chevrolet Tracker vehicle lines will remain unchanged.

The following list represents NHTSA's final calculation of theft rates for all 1998 passenger motor vehicle lines. This list is intended to inform the public of calendar year 1998 motor vehicle thefts of model year 1998 vehicles and does not have any effect on the obligations of regulated parties under 49 U.S.C. Chapter 331, Theft Prevention.

THEFT RATES OF MODEL YEAR 1998 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1998

Manufacturer	Make/model (line)	Thefts 1998	Production (mfr's) 1998	1998 theft rate (per 1,000 vehicles produced)
1 MITSUBISHI	DIAMANTE	87	6,584	13.2139
2 LAMBORGHINI	DB132/DIABLO	1	104	9.6154

THEFT RATES OF MODEL YEAR 1998 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1998—Continued

Manufacturer	Make/model (line)	Thefts 1998	Production (mfr's) 1998	1998 theft rate (per 1,000 vehicles produced)
3 SAAB	9000	12	1,335	8.9888
4 HONDA	ACURA INTEGRA	314	36,253	8.6614
5 MITSUBISHI	MIRAGE	357	41,904	8.5195
6 TOYOTA	TERCEL	92	11,207	8.2092
7 CHRYSLER CORP	DODGE STRATUS	750	107,276	6.9913
8 MITSUBISHI	MONTERO SPORT/NATIVA [1]	318	45,772	6.9475
9 GENERAL MOTORS	OLDSMOBILE ACHIEVA	181	26,922	6.7231
10 GENERAL MOTORS	GMC SAFARI VAN	161	24,451	6.5846
11 GENERAL MOTORS	BUICK SKYLARK	122	18,851	6.4718
12 HYUNDAI	SONATA	101	16,406	6.1563
13 SUZUKI	X–90	3	500	6.0000
14 CHRYSLER CORP	PLYMOUTH BREEZE	393	66,612	5.8998
15 MITSUBISHI	GALANT	172	29,618	5.8073
16 CHRYSLER CORP	PLYMOUTH NEON	499	87,055	5.7320
17 CHRYSLER CORP	DODGE NEON	725	130,154	5.5703
18 MITSUBISHI	ECLIPSE	307	56,294	5.4535
19 NISSAN	MAXIMA	682	130,862	5.2116
20 CHRYSLER CORP	SEBRING CONVERTIBLE	251	50,812	4.9398
21 FORD MOTOR CO	MERCURY TRACER	177	35,850	4.9372
22 HYUNDAI	ELANTRA	169	35,792	4.7217
23 SUZUKI	SWIFT	15	3,265	4.5942
24 GENERAL MOTORS	PONTIAC SUNFIRE	409	90,469	4.5209
25 MITSUBISHI	MONTERO	38	8,506	4.4674
26 SUZUKI	ESTEEM	67	15,222	4.4015
27 CHRYSLER CORP	JEEP GRAND CHEROKEE	1,085	249,097	4.3557
28 BMW	M3	50	11,537	4.3339
29 TOYOTA	SUPRA	3	697	4.3042
30 MAZDA	MILLENIA	82	19,908	4.1189
31 TOYOTA	LEXUS GS	124	30,810	4.0247
32 TOYOTA	4–RUNNER	489	121,745	4.0166
33 BMW	7	73	18,179	4.0156
34 FORD MOTOR CO	CONTOUR	866	217,548	3.9807
35 HYUNDAI	ACCENT	123	31,692	3.8811
36 GENERAL MOTORS	PONTIAC GRAND AM	386	101,814	3.7912
37 MITSUBISHI	3000GT	18	4,753	3.7871
38 NISSAN	ALTIMA	602	159,224	3.7808
39 CHRYSLER CORP	EAGLE TALON	16	4,317	3.7063
40 AUDI	CABRIOLET	3	829	3.6188
41 FORD MOTOR CO	MUSTANG	612	170,587	3.5876
42 MERCEDES BENZ	140 (CL–CLASS & SL–CLASS)	34	9,593	3.5443
43 SUZUKI	SIDEKICK	65	18,396	3.5334
44 NISSAN	SENTRA/200SX	395	111,821	3.5324
45 MAZDA	PROTEGE	201	57,165	3.5161
46 GENERAL MOTORS	CHEVROLET BLAZER S10/T10	759	216,854	3.5001
47 KIA MOTORS	SEPHIA	156	45,860	3.4017
48 GENERAL MOTORS	CHEVROLET PRIZM	153	45,000	3.4000
49 GENERAL MOTORS	PONTIAC FIREBIRD/FORMULA	107	32,228	3.3201
50 GENERAL MOTORS	CHEVROLET CAMARO	159	48,562	3.2742
51 FORD MOTOR CO	MERCURY MYSTIQUE	195	59,826	3.2595
52 ISUZU	RODEO	223	68,558	3.2527
53 CHRYSLER CORP	CIRRUS	121	37,295	3.2444
54 PORSCHE	911	8	2,474	3.2336
55 GENERAL MOTORS	CHEVROLET METRO	104	32,499	3.2001
56 CHRYSLER CORP	DODGE AVENGER	85	26,634	3.1914
57 GENERAL MOTORS	CHEVROLET CAVALIER	844	270,401	3.1213
58 FORD MOTOR CO	MERCURY SABLE	282	91,297	3.0888
59 FORD MOTOR CO	LINCOLN TOWN CAR	253	82,965	3.0495
60 TOYOTA	COROLLA	690	228,197	3.0237
61 MERCEDES BENZ	129 (SL–CLASS)	25	8,315	3.0066
62 FORD MOTOR CO	LINCOLN MARK VIII	43	14,357	2.9951
63 GENERAL MOTORS	CHEVROLET CORVETTE	86	28,732	2.9932
64 CHRYSLER CORP	JEEP CHEROKEE	439	148,207	2.9621
65 NISSAN	INFINITI I30	92	31,060	2.9620
66 FORD MOTOR CO	ESCORT	995	336,729	2.9549
67 GENERAL MOTORS	CADILLAC DEVILLE	305	104,209	2.9268
68 GENERAL MOTORS	CHEVROLET MALIBU	669	231,143	2.8943
69 GENERAL MOTORS	GMC JIMMY S–15	204	71,583	2.8498
70 FORD MOTOR CO	TAURUS	943	332,243	2.8383

THEFT RATES OF MODEL YEAR 1998 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1998—Continued

Manufacturer	Make/model (line)	Thefts 1998	Production (mfr's) 1998	1998 theft rate (per 1,000 vehicles produced)
71 TOYOTA	TACOMA PICKUP TRUCK	484	170,992	2.8305
72 HONDA	PRELUDE	45	15,973	2.8173
73 JAGUAR	XJ8	32	11,374	2.8134
74 MAZDA	626	246	87,448	2.8131
75 GENERAL MOTORS	OLDSMOBILE BRAVADA	77	27,790	2.7708
76 CHRYSLER CORP	SEBRING COUPE	93	35,035	2.6545
77 HYUNDAI	TIBURON	17	6,444	2.6381
78 CHRYSLER CORP	DODGE INTREPID	182	70,283	2.5895
79 NISSAN	INFINITI QX4	44	17,109	2.5717
80 HONDA	PASSPORT	63	25,435	2.4769
81 GENERAL MOTORS	CHEVROLET LUMINA/MONTE CARLO	616	255,423	2.4117
82 GENERAL MOTORS	CHEVROLET TRACKER	50	20,999	2.3811
83 NISSAN	PATHFINDER	186	81,428	2.2842
84 HONDA	CIVIC	838	368,876	2.2718
85 GENERAL MOTORS	PONTIAC BONNEVILLE	146	65,539	2.2277
86 VOLKSWAGEN	GOLF/GTI	40	17,971	2.2258
87 MERCEDES BENZ	208 (CLK–CLASS)	11	5,103	2.1556
88 CHRYSLER CORP	JEEP WRANGLER	185	90,341	2.0478
89 BMW	3	76	38,098	1.9949
90 VOLKSWAGEN	JETTA	149	74,701	1.9946
91 CHRYSLER CORP	STRATUS [2]	1	505	1.9802
92 BMW	5	70	35,631	1.9646
93 FORD MOTOR CO	F–150 PICKUP TRUCK	805	409,940	1.9637
94 JAGUAR	XJR	3	1,534	1.9557
95 TOYOTA	CAMRY	790	404,850	1.9513
96 FORD MOTOR CO	WINDSTAR VAN	646	333,746	1.9356
97 CHRYSLER CORP	NEON [2]	1	518	1.9305
98 KIA MOTORS	SPORTAGE	51	26,455	1.9278
99 VOLVO	S70/V70	167	87,069	1.9180
100 CHRYSLER CORP	PLYMOUTH VOYAGER/GRAND	299	156,440	1.9113
101 TOYOTA	LEXUS ES	96	50,585	1.8978
102 CHRYSLER CORP	DODGE CARAVAN/GRAND	538	288,662	1.8638
103 GENERAL MOTORS	CADILLAC ELDORADO	33	17,950	1.8384
104 GENERAL MOTORS	OLDSMOBILE INTRIGUE	180	99,035	1.8175
105 HONDA	ACURA TL	33	18,337	1.7996
106 TOYOTA	LEXUS SC	5	2,801	1.7851
107 ISUZU	TROOPER	33	18,657	1.7688
108 ISUZU	OASIS VAN	3	1,702	1.7626
109 FORD MOTOR CO	MERCURY GRAND MARQUIS	154	87,762	1.7547
110 FORD MOTOR CO	EXPLORER	773	446,467	1.7314
111 GENERAL MOTORS	CADILLAC SEVILLE	47	27,650	1.6998
112 CHRYSLER CORP	DODGE DAKOTA PICKUP TRUCK	245	144,215	1.6989
113 MERCEDES BENZ	210 (E–CLASS)	72	42,466	1.6955
114 VOLVO	C70	4	2,394	1.6708
115 TOYOTA	T100 PICKUP TRUCK	18	10,783	1.6693
116 GENERAL MOTORS	CADILLAC CATERA	46	27,571	1.6684
117 MAZDA	MPV	25	15,037	1.6626
118 GENERAL MOTORS	OLDSMOBILE CUTLASS	86	52,679	1.6325
119 GENERAL MOTORS	OLDSMOBILE AURORA	39	23,955	1.6281
120 ISUZU	HOMBRE PICKUP TRUCK	32	20,289	1.5772
121 GENERAL MOTORS	BUICK CENTURY	198	128,899	1.5361
122 FORD MOTOR CO	RANGER PICKUP TRUCK	451	297,551	1.5157
123 FORD MOTOR CO	MERCURY MOUNTAINEER	77	51,022	1.5092
124 GENERAL MOTORS	PONTIAC GRAND PRIX	188	127,838	1.4706
125 MAZDA	B SERIES PICKUP TRUCK	70	48,270	1.4502
126 TOYOTA	RAV4	93	64,298	1.4464
127 GENERAL MOTORS	BUICK REGAL	101	70,556	1.4315
128 HONDA	ACURA CL	36	25,471	1.4134
129 GENERAL MOTORS	CHEVROLET S–10 PICKUP TRUCK	348	248,330	1.4014
130 ISUZU	AMIGO	13	9,374	1.3868
131 JAGUAR	XK8	8	5,792	1.3812
132 PORSCHE	BOXSTER CONVERTIBLE	10	7,253	1.3787
133 MERCEDES BENZ	202 (C–CLASS)	45	34,100	1.3196
134 GENERAL MOTORS	GMC SONOMA PICKUP TRUCK	77	59,359	1.2972
135 GENERAL MOTORS	BUICK PARK AVENUE	80	62,015	1.2900
136 GENERAL MOTORS	PONTIAC TRANS SPORT VAN	70	54,839	1.2765
137 NISSAN	FRONTIER PICKUP TRUCK	111	89,266	1.2435
138 GENERAL MOTORS	SATURN SC	42	34,035	1.2340

THEFT RATES OF MODEL YEAR 1998 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 1998—Continued

Manufacturer	Make/model (line)	Thefts 1998	Production (mfr's) 1998	1998 theft rate (per 1,000 vehicles produced)
139 GENERAL MOTORS	BUICK RIVIERA	13	10,601	1.2263
140 VOLKSWAGEN	CABRIO	15	12,252	1.2243
141 HONDA	ACCORD	490	403,085	1.2156
142 BMW	Z3	20	16,482	1.2134
143 TOYOTA	LEXUS LS	27	22,840	1.1821
144 SUBARU	IMPREZA	23	19,550	1.1765
145 CHRYSLER CORP	CONCORDE	52	46,543	1.1172
146 MERCEDES BENZ	163 (ML–CLASS)	44	39,493	1.1141
147 HONDA	ACURA SLX	2	1,800	1.1111
148 MERCEDES BENZ	170 (SLK–CLASS)	14	12,658	1.1060
149 GENERAL MOTORS	OLDSMOBILE 88/REGENCY	69	64,116	1.0762
150 TOYOTA	AVALON	80	76,189	1.0500
151 SUBARU	LEGACY	95	90,721	1.0472
152 GENERAL MOTORS	CHEVROLET VENTURE VAN	93	93,027	0.9997
153 GENERAL MOTORS	SATURN SL	146	147,604	0.9891
154 HONDA	ACURA RL	14	14,182	0.9872
155 NISSAN	QUEST	26	26,388	0.9853
156 FORD MOTOR CO	LINCOLN CONTINENTAL	38	38,671	0.9826
157 CHRYSLER CORP	DODGE VIPER	1	1,067	0.9372
158 VOLVO	S90/V90	12	12,825	0.9357
159 VOLKSWAGEN	PASSAT	24	25,869	0.9278
160 NISSAN	240SX	2	2,178	0.9183
161 NISSAN	INFINITI Q45	7	7,795	0.8980
162 TOYOTA	CELICA	3	3,343	0.8974
163 CHRYSLER CORP	TOWN & COUNTRY MPV	52	62,976	0.8257
164 GENERAL MOTORS	BUICK LESABRE	111	143,354	0.7743
165 HONDA	CR–V	74	96,828	0.7642
166 JAGUAR	VANDEN PLAS	4	5,284	0.7570
167 FORD MOTOR CO	MERCURY VILLAGER MPV	28	37,471	0.7472
168 AUDI	A4	21	29,383	0.7147
169 TOYOTA	SIENNA VAN	48	73,777	0.6506
170 SUBARU	FORESTER	28	43,490	0.6438
171 AUDI	A6	10	16,938	0.5904
172 VOLKSWAGEN	NEW BEETLE	22	38,999	0.5641
173 HONDA	ODYSSEY VAN	8	14,633	0.5467
174 FORD MOTOR CO	CROWN VICTORIA	43	85,305	0.5041
175 GENERAL MOTORS	OLDSMOBILE SILHOUETTE VAN	17	35,827	0.4745
176 GENERAL MOTORS	SATURN SW	8	18,322	0.4366
177 SAAB	900	5	12,003	0.4166
178 GENERAL MOTORS	CHEVROLET ASTRO VAN	34	83,317	0.4081
179 ASTON MARTIN	DB7	0	213	0.0000
180 AUDI	A8	0	1,978	0.0000
181 CHRYSLER CORP	INTREPID [2]	0	171	0.0000
182 FERRARI	456	0	25	0.0000
183 FERRARI	550	0	149	0.0000
184 FERRARI	F355	0	511	0.0000
185 GENERAL MOTORS	BUICK FUNERAL COACH	0	1,061	0.0000
186 GENERAL MOTORS	CADILLAC LIMOUSINE	0	1,134	0.0000
187 HONDA	ACURA NSX	0	254	0.0000
188 LOTUS	ESPRIT	0	54	0.0000
189 ROLLS-ROYCE	BENTLEY AZURE	0	99	0.0000
190 ROLLS-ROYCE	BENTLEY BROOKLANDS	0	39	0.0000
191 ROLLS-ROYCE	BENTLEY CONTINENTAL R	0	24	0.0000
192 ROLLS-ROYCE	BENTLEY CONTINENTAL T	0	20	0.0000
193 ROLLS-ROYCE	BENTLEY TURBO R/RT	0	25	0.0000
194 ROLLS-ROYCE	SILVER SPUR PARK WARD	0	12	0.0000
195 ROLLS-ROYCE	SILVER SPUR	0	30	0.0000
196 VECTOR AUTO	AVTECH SC/M12	0	5	0.0000

[1] Nativa is the name applied to Montero Sport vehicles that are manufactured for sale only in Puerto Rico.
[2] These vehicles were manufactured for sale only in U.S. territories under the Chrysler name plate.

Issued on: June 23, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–16428 Filed 6–29–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20968]

National Express Group plc, et al.—Control Exemption—School Services and Leasing, Inc., et al.

AGENCY: Surface Transportation Board.

ACTION: Notice of filing of petition for exemption.

SUMMARY: National Express Group plc (NEG) and National Express Corporation (NEC), noncarriers, seek an exemption under 49 U.S.C. 13541 from the prior approval requirements of 49 U.S.C. 14303(a)(5) to acquire control of five motor passenger carriers. Expedited action has been requested.

DATES: Comments must be filed by July 17, 2000. Petitioners may file a reply by July 20, 2000.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20968 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of comments to petitioner's representative: Frank M. Putman, Gardere Wynne Sewell & Riggs, L.L.P., 1000 Louisiana, Suite 3400, Houston, TX 77002.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: NEG, an English corporation, and NEC, a Delaware corporation controlled by NEG (collectively petitioners),[1] request an exemption under 49 U.S.C. 13541 from the prior approval requirements of 49 U.S.C. 14303(a)(5) to acquire control of the following five motor passenger carriers (collectively carriers): School Services and Leasing, Inc.;[2] School Services and Leasing of Massachusetts, Inc.;[3] Student Bus Services, Inc.;[4] Helweg and Farmer Transportation Company, Inc.;[5] and Swope Farm & Livestock Company, Inc.[6]

Petitioners will acquire control of the carriers through the acquisition by NEC of all of the issued and outstanding capital stock of School Services of Kansas and Helweg. Indirect control of the other three carriers, School Services of Massachusetts, Student Bus Services, and Swope, will result from the acquisition of the stock of their parent corporations.[7] The transaction will be accomplished pursuant to a Share Purchase and Sale Agreement dated May 26, 2000, by and between NEC and Graydon J. Kincaid, Jr., the registered and beneficial owner of all of the issued and outstanding shares of capital stock of School Services of Kansas and Helweg. Upon completion of the acquistion of the stock, NEC will operate the carriers.

A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration-HMCE–20, 400 Virginia Avenue, SW., Suite 600, Washington, DC 20024; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: June 23, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–16647 Filed 6–29–00; 8:45 am]

BILLING CODE 4915–00–P

[1] Petitioners' existing subsidiaries include: ATC Vancom, Inc., Kenneth E. Bauman Bus, Inc., Durham Transportation, Inc., Crabtree-Harmon Corporation, Forsythe & Associates, Inc., Multisystems, Inc., and Robinson Bus Service, Inc. All of these subsidiaries provide non-regulated transportation services, although Robinson Bus Service, Inc., holds motor carrier authority in Docket No. MC–2844 (Sub-No. 7). NEG conducts a portion of its operations in North America through its wholly owned subsidiary, Nexus Investment General Partnership (NIGP), a Nevada general partnership, in which the only partners are two United Kingdom companies, both of which are wholly owned by NEG.

[2] School Services and Leasing, Inc. (School Services of Kansas), is a Kansas corporation. It holds federally issued operating authority in Docket No. MC–250907, which authorizes it to carry passengers for hire in interstate commerce, but it primarily provides non-regulated school transportation services.

[3] School Services and Leasing of Massachusetts, Inc. (School Services of Massachusetts), is a Massachusetts corporation and is a wholly owned subsidiary of School Services of Kansas. It is primarily a provider of non-regulated school transportation services.

[4] Student Bus Services, Inc. (Student Bus Services), is a Connecticut corporation and is a wholly owned subsidiary of School Services of Kansas. It is primarily a provider of non-regulated school transportation services.

[5] Helweg and Farmer Transportation Company, Inc. (Helweg), is a New Mexico corporation. It holds federally issued operating authority in Docket No. MC–337007 and has applied to the Federal Motor Carrier Safety Administration for authority to operate as a motor passenger contract carrier, but it is primarily a provider of non-regulated school transportation services.

[6] Swope Farm & Livestock Company, Inc. (Swope), is a New Mexico corporation and is a wholly owned subsidiary of Helweg. It holds federally issued operating authority in Docket No. MC–128026, but it is primarily a provider of non-regulated school transportation services.

[7] The appropriate filing has been made under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a, with respect to that portion of the transaction that involves NEG's control of non-federally regulated entities.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33883]

Iowa Interstate Railroad, Ltd. and Union Pacific Railroad Company—Joint Relocation Project Exemption—in Council Bluffs, Pottawattamie County, IA

On June 13, 2000, Iowa Interstate Railroad, Ltd. (IAIS) and Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate certain lines of railroad in Council Bluffs, Pottawattamie County, IA. The transaction was scheduled to be consummated on or after June 20, 2000.[1]

Under the joint relocation project, IAIS and UP propose the following transactions:

(1) IAIS will grant UP trackage rights between IAIS milepost 488.0 and IAIS milepost 486.8.

(2) UP will grant IAIS trackage rights between UP milepost 503.6 and UP milepost 504.05, and over the connecting track between this UP track segment and the IAIS near IAIS milepost 486.8.

(3) UP's operations north and west of UP milepost 504.05 will be moved to the IAIS trackage described in (1) above. The UP track between UP milepost 504.05 and UP milepost 505.2 will be abandoned and removed.

The proposed joint relocation project will not disrupt service to shippers.[2] Its purpose is to consolidate UP and IAIS operations on the IAIS line described above, to abandon the parallel UP track, and to eliminate 11 public grade crossings in metropolitan Council Bluffs. In addition, the project will facilitate expansion of a shipper facility

[1] The representatives of both IAIS and UP have acknowledged by telephone that the earliest the transaction could go forward was June 20, 2000.

[2] There are no shippers served by the UP track to be abandoned.

located just north of UP milepost 504.05.

The Board will exercise jurisdiction over the abandonment or construction components of a relocation project, and require separate approval or exemption, only where the removal of track affects service to shippers or the construction of new track involves expansion into new territory. *See City of Detroit* v. *Canadian National Ry. Co., et al.,* 9 I.C.C.2d 1208 (1993), *aff'd sub nom., Detroit/Wayne County Port Authority* v. *ICC,* 59 F.3d 1314 (D.C. Cir. 1995). Line relocation projects may embrace trackage rights transactions such as the one involved here. *See D.T.&I.R.—Trackage Rights,* 363 I.C.C. 878 (1981). Under these standards, the incidental abandonment, construction, and trackage rights components require no separate approval or exemption when the relocation project, as here, will not disrupt service to shippers and thus qualifies for the class exemption at 49 CFR 1180.2(d)(5).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

If the 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 will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring STB Finance Docket No. 33883, 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 T. Scott Bannister, Esq., 1300 Des Moines Building, Des Moines, IA 50309.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: June 23, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–16492 Filed 6–29–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 23, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 31, 2000 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0250.

Recordkeeping Requirement ID Number: ATF REC 5110/5.

Type of Review: Extension.

Title: Distilled Spirits Plants (DSP)—Transaction and Supporting Records.

Description: Transaction records provide the source data for accounts of distilled spirits in all DSP operations. They are used by DSP proprietors to account for spirits and by ATF to verify those accounts and consequent tax liabilities.

Respondents: Business of other for-profit.

Estimated Number of Recordkeepers: 278.

Estimated Burden Hours Per Recordkeeper: 22 hours.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 6,060 hours.

OMB Number: 1512–0462.

Recordkeeping Requirement ID Number: ATF REC 5110/9.

Type of Review: Extension.

Title: Registration and Records of Vinegar Vaporizing Plants.

Description: Data is necessary to identify persons producing and using distilled spirits in the manufacture of vinegar and to account for spirits so produced and used.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 1.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1512–0466.

Recordkeeping Requirement ID Number: ATF REC 5170/7

Type of Review: Extension.

Title: Alternate Methods or Procedures and Emergency Variations From Requirements for Exports of Liquors.

Description: ATF allows exporters to request approval of alternative methods from those specified in regulations under 27 CFR Part 252. ATF uses the information to evaluate need, jeopardy to the revenue, and compliance with law. Also used to identify areas where regulations need change.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 500.

Estimated Burden Hours Per Recordkeeper: 2 hours.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 200 hours.

OMB Number: 1512–0469.

Form Number: None.

Type of Review: Extension.

Title: Labeling of Sulfites in Alcoholic Beverages.

Description: In a final rule published in the **Federal Register** on July 9, 1986 (51 FR 34706) the Food and Drug Administration established 10 parts per million as the threshold for declaration of sulfites in food and wine products. The Bureau of Alcohol, Tobacco and Firearms on September 30, 1986, published a final rule (ATF–236)(51 FR 34706) establishing the threshold for declaration of sulfites in alcoholic beverages.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 4,787.

Estimated Burden Hours Per Respondent: 40 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,159 hours.

Clearance Officer: Frank Bowers (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, N.W., Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 00–16534 Filed 6–29–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Customs Service

Privacy Act of 1974; System of Records

AGENCY: Customs Service, Treasury.

ACTION: Notice of Proposed Revision to a Privacy Act System of Records Routine Use.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the U.S. Customs Service gives notice of an alteration to the system of records, Treasury/Customs .244—Treasury Enforcement Communications System (TECS).

DATES: Comments must be received no later than July 31, 2000. This altered system of records will be effective August 9, 2000, unless comments are received which result in a contrary determination.

ADDRESSES: Comments (preferably in triplicate) may be submitted to the Office of Regulations and Rulings, Disclosure Law Branch, U.S. Customs Service, 1300 Pennsylvania Ave. NW., Washington, DC 20229. Comments will be available for inspection and copying at the Disclosure Law Branch, 1300 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lee Kramer, Chief Disclosure Law Branch, Office of Regulations and Rulings, U.S. Customs Service, Room 3.4C, Ronald Reagan Building, 1300 Pennsylvania Ave., NW, Washington, DC 20229, (202) 927–1251.

SUPPLEMENTARY INFORMATION: A notice adding a routine use to Treasury/Customs .244—Treasury Enforcement Communications System (TECS) was published on March 25, 1999, at 64 FR 14500. The revision to routine use (6) will clear up any uncertainty caused by the current wording of the routine use and more clearly describe the direct exchange of the information to NCMEC.

The altered system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform in the House of Representatives, the Committee on Governmental Affairs in the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996.

The alteration to routine use (6) found in Treasury/Customs .244—Treasury Enforcement Communications System (TECS) is as follows:

Treasury/Customs .244

SYSTEM NAME:

Treasury Enforcement Communications System (TECS)—Treasury/Customs.

* * * * *

DESCRIPTION OF CHANGE:

Delete the current language of routine use (6) and insert the following:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

(6) To provide passenger archive information and other TECS data relevant to the National Center for Missing and Exploited Children (NCMEC) investigation through Department of the Treasury law enforcement officers to personnel of the NCMEC to assist in investigations of missing or exploited children.

* * * * *

Dated: June 22, 2000.

Shelia Y. McCann,

Deputy Assistant Secretary (Administration).

[FR Doc. 00–16533 Filed 6–29–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Renegotiation Board Interest Rate; Prompt Payment Interest Rate; Contract Disputes Act

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Notice.

SUMMARY: For the period beginning July 1, 2000 and ending on December 31, 2000 the prompt payment interest rate is 7.25 per centum per annum.

ADDRESSES: Comments or inquiries may be mailed to Eleanor Farrar, Team Leader, Debt Accounting Branch, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia, 26106–1328. A copy of this Notice will be available to download from the http://www.publicdebt.treas.gov.

DATES: This notice announces the applicable interest rate for the July 1, 2000 to December 31, 2000 period.

FOR FURTHER INFORMATION CONTACT: Stephanie Brown, Debt Accounting Branch Manager, Office of Public Debt Accounting, Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328, (304) 480–5181, Eleanor Farrar, Team Leader, Debt Accounting Branch, Office of Public Debt Accounting, Bureau of the Public Debt, (304) 480–5166, Edward C. Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–3692, or Robin E. Dunlop, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, (304) 480–3698.

SUPPLEMENTARY INFORMATION: Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 Sec. 2, Pub.L. 92–41, 85 Stat. 97. For example, the Contract Disputes Act of 1978 Sec. 12, Pub.L. 95–563, 92 Stat. 2389 and the Prompt Payment Act of 1982 Sec. 2, Pub.L. 97–177, 96 Stat. 85 provide for the calculation of interest due on claims at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. 3902(a).

Therefore, notice is given that, the Secretary of the Treasury has determined that the rate of interest applicable, for the period beginning July 1, 2000 and ending on December 30, 2000, is 7.25 per centum per annum. This rate is determined pursuant to the above mentioned sections for the purpose of said sections.

Dated: June 27, 2000.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 00–16796 Filed 6–29–00; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; 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 comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on the OTS Notice of Hiring or Indemnifying Senior Executive Officers.

DATES: Submit written comments on or before August 29, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information

Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0047. Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755; or (202) 906–6956 (if comments are over 25 pages). Send e-mails to ''public.info@ots.treas.gov'', and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. N.W., from 10 a.m. until 4 p.m. on Tuesdays and Thursdays.

FOR FURTHER INFORMATION CONTACT: Nadine Washington, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–6706.

SUPPLEMENTARY INFORMATION:

Title: Notice of Hiring or Indemnifying Senior Executive Officers.

OMB Number: 1550–0047.

Form Number: OTS 1624, 1623, 1606.

Abstract: Congress requires the OTS to ensure that individuals and/or companies proposing to acquire, either directly or indirectly, control of, or to exercise influence over the operations of, OTS regulated savings institutions, will operate such institutions in a safe and sound manner. OTS is revising Form 1606, Applicant Certification, attached to OTS Regulatory Bulletin Number RB 20, regarding criminal and other background information of interest to the OTS in the evaluation process.

Current Actions: OTS proposes to renew this information collection with revision.

Type of Review: Revision.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 1,798.

Estimated Time Per Respondent: 5.8 hours.

Estimated Total Annual Burden Hours: 10,438 hours.

Request for Comments

The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment 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; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or starting costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 26, 2000.

John E. Werner,

Director, Information & Management Services Division.

[FR Doc. 00–16589 Filed 6–29–00; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Friday,
June 30, 2000

Part II

Department of Agriculture

Forest Service

Department of the Interior

Fish and Wildlife Service

36 CFR Part 242

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2000–2001 Subsistence Taking of Fish and Wildlife Regulations; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AF74; RIN 1018–AG03

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2000–2001 Subsistence Taking of Fish and Wildlife Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes regulations for seasons, harvest limits, methods, and means related to taking of wildlife for subsistence uses during the 2000–2001 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. This rulemaking replaces the wildlife regulations included in the ''Subsistence Management Regulations for Public Lands in Alaska, Subpart D—1999–2000 Subsistence Taking of Fish and Wildlife Regulations,'' which expire on June 30, 2000. This rule also amends the Rural Determinations (Section ____.23 of Subpart C) and Customary and Traditional Use Determinations of the Federal Subsistence Board (Section ____.24 of Subpart C).

DATES: Sections ____.23 and .24(a)(1) are effective July 1, 2000. Section ____.25 is effective July 1, 2000, through June 30, 2001.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region (907) 786–3888.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participated in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

All Board members have reviewed this rule and agree with its substance. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 apply to regulations found in this subpart.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (1999) and 50 CFR 100.11 (1999), and for the purposes identified therein, we divide Alaska into ten subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Regional Council). The Regional Councils provide a forum for rural residents, with personal knowledge of local conditions and resource requirements, to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils had a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, presented their Council's recommendations at the Board meeting of May 2–4, 2000.

Summary of Changes

Section __.24 (Customary and traditional use determinations) was originally published in the **Federal Register** (57 FR 22940) on May 29, 1992. Since that time, the Board has made a number of Customary and Traditional Use Determinations at the request of impacted subsistence users. Those modifications, along with some administrative corrections, were published in the **Federal Register** (59 FR 27462, published May 27, 1994; 59 FR 51855, published October 13, 1994; 60 FR 10317, published February 24, 1995; 61 FR 39698, published July 30, 1996; 62 FR 29016, published May 29, 1997; 63 FR 35332, published June 29, 1998; 63 FR 46148, published August 28, 1998; and 64 FR 35776, published July 1, 1999). During its May 2–4, 2000, meeting, the Board made additional determinations in addition to various annual season and harvest limit changes. The public has had extensive opportunity to review and comment on all changes. Additional details on the recent Board modifications are contained below in Analysis of Proposals Adopted by the Board.

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Customary and traditional use determinations are also subject to an annual review process providing for modification each year. Proposed Subpart D regulations for the 2000–2001 seasons and harvest limits, and methods and means were published on September 10, 1999, in the **Federal Register** (64 FR 49278–49320). A 60-day comment period providing for public review of the proposed rule and calling for proposals was advertised by mail, radio, and newspaper. During that period, the Regional Councils met and, in addition to other Regional Council business, received suggestions for proposals from the public. The Board received a total of 61 proposals for changes to Customary and Traditional Use Determinations or to Subpart D. Subsequent to the 60-day review period, the Board prepared a booklet describing the proposals and distributed it to the public. The public had an additional 30 days in which to comment on the proposals for changes to the regulations. The ten Regional Councils met again, received public comments, and formulated their recommendations to the Board on proposals for their respective regions. Two of the proposals were withdrawn from consideration by their originators. A review of the Kenai Peninsula nonrural determinations (see 65 FR 8673, February 22, 2000) was also included for deliberation at the May 2–4, 2000, Board meeting. These final regulations reflect Board review and consideration of Regional Council recommendations and public comments.

Analysis of Proposals Rejected by the Board

The Board rejected 18 proposals and part of 1 other. All but two of these rejections were based on recommendations from the respective Regional Council and additional factors. In those two cases, adopting the proposals would have adversely impacted the local subsistence users without biological justification.

The Board rejected four proposals requesting that customary and traditional use determinations be revised for bear, goat, or moose. In each case, the cultural information did not substantiate the request.

Three proposals requested establishing or expanding seasons for moose or closing Federal lands to nonsubsistence users. These proposals were rejected for conservation reasons or because the moose population in the area could support both subsistence and non-subsistence harvest.

Two proposals requested establishing or expanding hunt areas for caribou. These proposals were rejected for conservation reasons or because the caribou population in the area could support both subsistence and non-subsistence harvest.

Four proposals requested restricting seasons or harvest limits for deer. These proposals were rejected because the deer population in the area could support both subsistence and non-subsistence harvest.

Two proposals requested closing Federal lands to the use of motorized vehicles for the taking of deer and black bear. These proposals were rejected because the deer and black bear populations in the area could support both subsistence and non-subsistence harvest and such an access restriction would needlessly restrict subsistence users.

Two proposals requested redefining the term ''edible meat.'' These proposals were rejected for conservation reasons and to retain alignment with the State definition.

The Board deferred action on one proposal in order to allow communities or Regional Councils additional time to review the issues and provide additional information.

Analysis of Proposals Adopted by the Board

The Board adopted 38 proposals and part of 1 other. Some of these proposals were adopted as submitted and others were adopted with modifications suggested by the respective Regional Council or developed during the Board's public deliberations.

All but one of the adopted proposals were recommended for adoption by at least one of the Regional Councils and were based on meeting customary and traditional uses, harvest practices, or protecting wildlife populations. Detailed information relating to justification for the action on each proposal may be found in the Board meeting transcripts, available for review at the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska or on the Office of Subsistence Management website (http://www.r7.fws.gov/asm/home.html). Additional technical clarifications and removal of excess materials have been made, which result in a more readable document.

Multiple Regions

The Board adopted one proposal regarding expansion of the furbearer trapping seasons regulations found in § ____.25, which affects residents of several Regions.

Southeast Region

The Board adopted two proposals affecting residents of the Southeast Region resulting in the following change to the regulations found in § __.25.

- Established a brown bear educational permit hunt in Unit 4.

Southcentral Region

The Board tabled one proposal because most of the components were previously addressed in another proposal and adopted eight proposals affecting residents in the Southcentral Region resulting in the following changes to the regulations found in § __.24 and § __.25.

- Revised the hunt area and harvest limit for goat in Unit 6.
- Revised the customary and traditional use determination for goat in Unit 11.
- Established a season and provided for the ceremonial take of moose in Unit 6.
- Revised the requirement for proof of sex on harvested moose in Units 11 and 13 and added the requirement for permits in Unit 11.
- Established a hunting season for beaver in Units 6, 7, 11, 13, and 14 and revised the seasons for beaver in Units 6, 11, 13, and 16 and wolves in Unit 13.

Kodiak/Aleutians Region

The Board adopted three proposals affecting residents in the Kodiak/Aleutians Region resulting in the following changes to the regulations found in § ____.24 and § ____.25.

- Deleted the access restrictions for elk in Unit 8.
- Established a customary and traditional use determination for caribou in parts of Units 9 and 10.
- Established a season and harvest limit for caribou in parts of Units 9 and 10 and provided for designated hunter permits.

Bristol Bay Region

The Board adopted seven proposals affecting residents in the Bristol Bay Region resulting in the following changes to the regulations found in § __.24 and § __.25.

- Revised the customary and traditional use determination for caribou and moose in parts of Unit 17.
- Established a designated hunter system for caribou in part of Unit 9.
- Revised the season for moose in part of Unit 9.
- Revised the season for beaver in parts of Units 9 and 17 and in Unit 18.

Yukon-Kuskokwim Delta Region

The Board adopted one proposal affecting residents of the Yukon-Kuskokwim Delta Region resulting in the following change to the regulations found in § ____.25.

• Allowed the taking of caribou from a boat in Unit 18.

Western Interior Region

The Board adopted nine proposals affecting residents of the Western Interior Region resulting in the following change to the regulations found in § ____.24 and § ____.25.

• Revised the season and harvest limits for brown bear in part of Unit 21.

• Revised the customary and traditional use determinations for caribou in Unit 24.

• Revised the hunt area description and harvest limits for caribou in Unit 24.

• Revised the seasons and harvest limits for moose in Units 21 and 24.

• Revised the harvest limits for coyote in Units 19, 21, and 24.

Seward Peninsula Region

The Board adopted four proposals and part of another affecting residents of the Seward Peninsula Region resulting in the following change to the regulations found in § ____.25.

• Revised the season for brown bear in part of Unit 22.

• Revised the permit structure for a muskox hunt in part of Unit 22.

• Revised the harvest limit for moose in part of Unit 22.

• Revised the season for ptarmigan in part of Unit 22.

The Board, on June 14 acting on a Special Action request, increased the number of muskox permits in part of Unit 22 and increased the overall harvest quota.

Eastern Interior Region

The Board adopted three proposals affecting residents of the Eastern Interior Region resulting in the following changes to the regulations found in § ____.25.

• Revised the harvest limit, opening authority, and redefined the closed area for caribou in Unit 12.

• Revised the permit quota for moose in part of Unit 25.

Kenai Rural/Nonrural Determination Request

In addition, the Board considered and adopted a request from the Kenaitze Indian Tribe to determine the Kenai Peninsula rural for the purposes of Title VIII of ANILCA resulting in changes to the regulations found in § ____.23.

The Board received 15 written comments on the Proposed Rule regarding revised rural/nonrural determinations for the Kenai Peninsula (65 FR 8673, published February 22, 2000.) The Board also received testimony during a public hearing held March 1, 2000, in Kenai, Alaska.

Public Comments

Many of the commentors expressed support either for or against a rural or nonrural determination. Some indicated that a rural decision should be made to correct an alleged original error in the determination in 1990. Most of the testimony and written comments did not specifically address the adequacy of the rule or the rural/nonrural determination.

A number of commentors compared the original rural/nonrural determination for the Kenai Peninsula communities with the determinations made for Kodiak, Sitka, and Saxman. The Board, as they received testimony on May 4, 2000, was swayed by the recommendation of the Southcentral Regional Advisory Council and testimony that pointed out inconsistencies between the determinations for the Kenai Peninsula communities with the determinations made for Kodiak, Sitka, and Saxman. The Board also took into account the designation of the Kenai Peninsula communities as ''rural'' by other Federal agencies for various assistance programs. Additionally, the Board found the fact that many of the residents of the Kenai Peninsula communities have a subsistence lifestyle, a compelling reason to designate those communities as rural.

Two commentors addressed a concern that, if a community is road-connected, it should not be designated rural. Title VIII and the legislative history did not address this issue. The Board, therefore, does not use connection by road as an automatic indicator of the rural or nonrural nature of a community. In fact, many, very tiny outlying areas on the road system in the State definitely demonstrate characteristics of a rural nature.

One commentor pointed out that, during the normal 10-year review after the data has been received from the 2000 Census and the determinations are reviewed on a statewide basis, these communities could revert to a nonrural status, but because of the language in the regulations, would have a five-year adoption period. The commentor felt that this six to seven year period of having a rural determination and priority for subsistence use of the resources for about 35,000 additional users would place undue stress on the resource and could severely disrupt the economy of the Kenai Peninsula. The Board must, and will, only make decisions that provide an opportunity for a subsistence priority consistent with the conservation of healthy populations of fish and wildlife resources.

Some commentors indicated a serious need for the development of a valid methodology that could be used for aggregating communities and for then making a rural/nonrural determination. The Board has initiated steps to contract for the development of such methodologies.

The Board, after hearing a summary of the staff report, including oral and written comments on the Proposed Rule, receiving a recommendation from the Southcentral Regional Advisory Council, and receiving testimony from the State of Alaska, and numerous interested citizens, deliberated in open forum and determined that the entire Kenai Peninsula should be designated rural. Accordingly, we are amending 36 CFR 242.23(a) and 50 CFR 100.23(a) to remove the Kenai Peninsula communities (Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kasilof, Clam Gulch, Anchor Point, Homer, Kachemak City, Fritz Creek, Moose Pass, and Seward) from the list of areas determined to be nonrural.

Administrative Procedure Act Compliance

The Board finds that additional public notice under the Administrative Procedure Act (APA) for this final rule are unnecessary, and contrary to the public interest. The Board has provided extensive opportunity for public input and involvement over and above standard APA requirements, including participation in multiple Regional Council meetings, additional public review and comment on all proposals for regulatory change, and opportunity for additional public comment during the Board meeting prior to deliberation. Additionally, an administrative mechanism exists (and has been used by the public) to request reconsideration of the Board's decision on any particular proposal for regulatory change. Over the nine years the Program has been operating, no benefit to the public has been demonstrated by delaying the effective date of the regulations. A lapse in regulatory control could seriously affect the continued viability of wildlife populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause under 5 U.S.C. 553(d)(3) to make this rule effective July 1, 2000.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, decided to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. They apply to the use of public lands in Alaska. The information collection requirements described below were approved by OMB under 44 U.S.C. 3501 and were assigned clearance number 1018–0075, which expires May 31, 2003. The information collection requirements described below will be submitted to OMB for approval beyond that date. We will not conduct or sponsor, and you are not required to respond to, a collection of information request unless it displays a currently valid OMB control number.

The collection of information will be achieved through the use of the Federal Subsistence Hunt Permit Application. This collection of information will establish whether the applicant qualifies to participate in a Federal subsistence hunt on public lands in Alaska and will provide a report of harvest and location of harvest.

The likely respondents to this collection of information are rural Alaska residents who wish to participate in specific subsistence hunts on Federal land. The collected information is necessary to determine harvest success and harvest location in order to make management decisions relative to the conservation of healthy wildlife populations. The annual burden of reporting and recordkeeping is estimated to average 0.25 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under this rule is less than 5,000, yielding a total annual reporting and recordkeeping burden of 1,250 hours or less.

Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 222 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (Subsistence), Washington, DC 20503. Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under Subpart B.

Other Requirements

This rule was not subject to OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as ammunition, snowmachine, and gasoline dealers. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources harvested under this rule will be consumed by the local harvester and do not result in a dollar benefit to the economy. However, we estimate that 2 million pounds of meat are harvested by the local subsistence users annually and, if given a dollar value of $3.00 per pound, would equate to $6 million Statewide.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that these final regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

In accordance with Executive Order 13132, the rule does not have sufficient

federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

Drafting Information

William Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Curt Wilson, Alaska State Office, Bureau of Land Management; Greg Bos, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service, provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board amends Title 36, part 242, and Title 50, part 100, of the Code of Federal Regulations, as set forth below.

PART ____—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart C—Board Determinations

2. In Subpart C of 36 CFR part 242 and 50 CFR part 100, § ____(a) is revised to read as follows:

§ ____.23 Rural determinations.

(a) The Board has determined all communities and areas to be rural in accordance with § ____.15 except the following:

Adak;
Fairbanks North Star Borough;
Juneau area—including Juneau, West Juneau and Douglas;
Ketchikan area—including Ketchikan City, Clover Pass, North Tongass Highway, Ketchikan East, Mountain Pass, Herring Cove, Saxman East, and parts of Pennock Island;
Municipality of Anchorage;
Valdez; and
Wasilla area—including Palmer, Wasilla, Sutton, Big Lake, Houston, and Bodenberg Butte.

(b) You may obtain maps delineating the boundaries of nonrural areas from the U.S. Fish and Wildlife Service, Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, AK 99503.

3. In Subpart C of 36 CFR part 242 and 50 CFR part 100, § ____.24(a)(1) is revised to read as follows:

§ ____.24 Customary and traditional use determinations.

(a) * * *

(1) *Wildlife determinations.*

Area	Species	Determination
Unit 1(C)	Black Bear	Residents of Unit 1(C), 1(D), 3, and residents of Hoonah, Pelican, Point Baker, Sitka, and Tenakee Springs.
1(A)	Brown Bear	Residents of Unit 1(A) except no subsistence for residents of Hyder.
1(B)	Brown Bear	Residents of Unit 1(A), Petersburg, and Wrangell, except no subsistence for residents of Hyder.
1(C)	Brown Bear	Residents of Unit 1(C), Haines, Hoonah, Kake, Klukwan, Skagway, and Wrangell, except no subsistence for residents of Gustavus.
1(D)	Brown Bear	Residents of 1(D).
1(A)	Deer	Residents of 1(A) and 2.
1(B)	Deer	Residents of Unit 1(A), residents of 1(B), 2 and 3.
1(C)	Deer	Residents of 1(C) and (D), and residents of Hoonah, Kake, and Petersburg.
1(D)	Deer	No Federal subsistence priority.
1(B)	Goat	Residents of Units 1(B) and 3.
1(C)	Goat	Residents of Haines, Kake, Klukwan, Petersburg, and Hoonah.
1(B)	Moose	Residents of Units 1, 2, 3, and 4.
1(C) Berner's Bay	Moose	No Federal subsistence priority.
1(D)	Moose	Residents of Unit 1(D).
Unit 2	Brown Bear	No Federal subsistence priority.
2	Deer	Residents of Unit 1(A) and residents of Units 2 and 3.
Unit 3	Deer	Residents of Unit 1(B) and 3, and residents of Port Alexander, Port Protection, Pt. Baker, and Meyer's Chuck.
3, Wrangell and Mitkof Islands	Moose	Residents of Units 1(B), 2, and 3.
Unit 4	Brown Bear	Residents of Unit 4 and Kake.
4	Deer	Residents of Unit 4 and residents of Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, Wrangell, and Yakutat.
4	Goat	Residents of Sitka, Hoonah, Tenakee, Pelican, Funter Bay, Angoon, Port Alexander, and Elfin Cove.
Unit 5	Black Bear	Residents of Unit 5(A).

Area	Species	Determination
5	Brown Bear	Residents of Yakutat.
5	Deer	Residents of Yakutat.
5	Goat	Residents of Unit 5(A)
5	Moose	Residents of Unit 5(A).
5	Wolf	Residents of Unit 5(A).
Unit 6(A)	Black Bear	Residents of Yakutat and residents of 6(C) and 6(D), except no subsistence for Whittier.
6, remainder	Black Bear	Residents of Unit 6(C) and 6(D), except no subsistence for Whittier.
6	Brown Bear	No Federal subsistence priority.
6(A)	Goat	Residents of Unit 5(A), 6(C), Chenega Bay and Tatitlek.
6(C) and (D)	Goat	Residents of Unit 6(C) and (D).
6(A)	Moose	Unit 6(A)—Residents of Units 5(A), 6(A), 6(B) and 6(C).
6(B) and (C)	Moose	Residents of Units 6(A), 6(B) and 6(C).
6(D)	Moose	No Federal subsistence priority.
6(A)	Wolf	Residents of Units 5(A), 6, 9, 10(Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
6, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 7	Brown Bear	No Federal subsistence priority.
7	Caribou	No Federal subsistence priority.
7, Brown Mountain hunt area	Goat	Residents of Port Graham and English Bay.
7, that portion draining into Kings Bay	Moose	Residents of Chenega Bay and Tatitlek.
7, remainder	Moose	No Federal subsistence priority.
7	Sheep	No Federal subsistence priority.
Unit 8	Brown Bear	Residents of Old Harbor, Akhiok, Larsen Bay, Karluk, Ouzinkie, and Port Lions.
8	Deer	Residents of Unit 8.
8	Elk	Residents of Unit 8.
8	Goat	No Federal subsistence priority.
Unit 9(D)	Bison	No Federal subsistence priority.
9(A) and (B)	Black Bear	Residents of Units 9(A) and (B), and 17(A), (B), and (C).
9(A)	Brown Bear	Residents of Pedro Bay.
9(B)	Brown Bear	Residents of Unit 9(B).
9(C)	Brown Bear	Residents of Unit 9(C).
9(D)	Brown Bear	Residents of Units 9(D) and 10 (Unimak Island).
9(E)	Brown Bear	Residents of Chignik, Chignik Lagoon, Chignik Lake, Egegik, Ivanof Bay, Perryville, Pilot Point, Ugashik, and Port Heiden/Meshik.
9(A) and (B)	Caribou	Residents of Units 9(B), 9(C) and 17.
9(C)	Caribou	Residents of Unit 9(B), 9(C), 17 and residents of Egegik.
9(D)	Caribou	Residents of Unit 9(D), and residents of Akutan, False Pass.
9(E)	Caribou	Residents of Units 9(B), (C), (E), 17, and residents of Nelson Lagoon and Sand Point.
9(A), (B), (C) and (E)	Moose	Residents of Unit 9(A), (B), (C) and (E).
9(D)	Moose	Residents of Cold Bay, False Pass, King Cove, Nelson Lagoon, and Sand Point.
9(B)	Sheep	Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth.
9, remainder	Sheep	No determination.
9	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
9(A), (B), (C), and (E)	Beaver	Residents of Units 9(A), (B), (C), (E), and 17.
Unit 10 Unimak Island	Brown Bear	Residents of Units 9(D) and 10 (Unimak Island).
Unit 10 Unimak Island	Caribou	Residents of Akutan, False Pass, King Cove, and Sand Point.
10, remainder	Caribou	No determination.
10	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 11	Bison	No Federal subsistence priority.
11, north of the Sanford River	Black Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Units 11 and 12.
11, remainder	Black Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Unit 11.
11, north of the Sanford River	Brown Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Units 11 and 12.

Area	Species	Determination
11, remainder	Brown Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Unit 11.
11, north of the Sanford River	Caribou	Residents of Units 11, 12, and 13 (A)–(D) and the residents of Chickaloon, Healy Lake, and Dot Lake.
11, remainder	Caribou	Residents of Units 11 and 13 (A)–(D) and the residents of Chickaloon.
11	Goat	Residents of Unit 11 and the residents of Chitina, Chistochina, Copper Center, Gakona, Glennallen, Gulkana, Mentasta Lake, Tazlina, Tonsina, and Dot Lake.
11, north of the Sanford River	Moose	Residents of Units 11, 12, and 13 (A)–(D) and the residents of Chickaloon, Healy Lake, and Dot Lake.
11, remainder	Moose	Residents of Units 11, 13 (A)–(D), and residents of Chickaloon.
11, north of the Sanford River	Sheep	Residents of Unit 12 and the communities and areas of Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Glennallen, Gulkana, Healy Lake, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/ South Park, Tazlina and Tonsina; residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
11, remainder	Sheep	Residents of the communities and areas of Chisana, Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/ South Park, Tazlina and Tonsina; residents along the Tok Cutoff—Milepost 79–110 (Mentasta Pass), residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
11	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
11	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
11	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 12	Brown Bear	Residents of Unit 12 and Dot Lake, Chistochina, Gakona, Mentasta Lake, and Slana.
12	Caribou	Residents of Unit 12 and residents of Dot Lake, Healy Lake, and Mentasta Lake.
12, south of a line from Noyes Mountain, southeast of the confluence of Tatschunda Creek to Nabesna River.	Moose	Residents of Unit 11 north of 62nd parallel (excluding North Slana Homestead and South Slana Homestead); and residents of Units 12, 13(A)–(D) and the residents of Chickaloon, Dot Lake, and Healy Lake.
12, east of the Nabesna River and Nabesna Glacier, south of the Winter Trail from Pickerel Lake to the Canadian Border.	Moose	Residents of Unit 12 and Healy Lake.
12, remainder	Moose	Residents of Unit 12 and residents of Dot Lake, Healy Lake, and Mentasta Lake.
12	Sheep	Residents of Unit 12 and residents of Chistochina, Dot Lake, Healy Lake, and Mentasta Lake.
12	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 13	Brown Bear	Residents of Unit 13.
13(B)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, residents of Unit 20(D) except Fort Greely, and the residents of Chickaloon.
13(C)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, and the residents of Chickaloon, Dot Lake and Healy Lake.
13(A) & (D)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, and the residents of Chickaloon.
13(E)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, and the residents of Chickaloon, McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
13(D)	Goat	No Federal subsistence priority.
13(A) and (D)	Moose	Residents of Unit 13 and the residents of Chickaloon.
13(B)	Moose	Residents of Units 13, 20(D) except Fort Greely, and the residents of Chickaloon.

Area	Species	Determination
13(C)	Moose	Residents of Units 12, 13 and the residents of Chickaloon, Healy Lake, and Dot Lake.
13(E)	Moose	Residents of Unit 13 and the residents of Chickaloon and of McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
13(D)	Sheep	No Federal subsistence priority.
13	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
13	Grouse (Spruce, Blue, Ruffed & Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
13	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 14(B) and (C)	Brown Bear	No Federal subsistence priority.
14	Goat	No Federal subsistence priority.
14	Moose	No Federal subsistence priority.
14(A) and (C)	Sheep	No Federal subsistence priority.
Unit 15(C)	Black Bear	Residents of Port Graham and Nanwalek only.
15, remainder	Black Bear	No Federal subsistence priority.
15	Brown Bear	No Federal subsistence priority.
15(C), Port Graham and English Bay hunt areas	Goat	Residents of Port Graham and Nanwalek.
15(C), Seldovia hunt area	Goat	Residents Seldovia area.
15	Moose	Residents of Ninilchik, Nanwalek, Port Graham, and Seldovia.
15	Sheep	No Federal subsistence priority.
15	Ptarmigan (Rock, Willow and White-tailed).	Residents of Unit 15.
15	Grouse (Spruce)	Residents of Unit 15.
15	Grouse (Ruffed)	No Federal subsistence priority.
Unit 16(B)	Black Bear	Residents of Unit 16(B).
16	Brown Bear	No Federal subsistence priority.
16(A)	Moose	No Federal subsistence priority.
16(B)	Moose	Residents of Unit 16(B).
16	Sheep	No Federal subsistence priority.
16	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
16	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
16	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 17(A) and that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake.	Black Bear	Residents of Units 9(A) and (B), 17, and residents of Akiak and Akiachak.
17, remainder	Black Bear	Residents of Units 9(A) and (B), and 17.
17(A)	Brown Bear	Residents of Unit 17, and residents of Akiak, Akiachak, Goodnews Bay and Platinum.
17(A) and (B), those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Brown Bear	Residents of Kwethluk.
17(B), that portion draining into Nuyakuk Lake and Tikchik Lake.	Brown Bear	Residents of Akiak and Akiachak.
17(B) and (C)	Brown Bear	Residents of Unit 17.
17	Caribou	Residents of Units 9(B), 17 and residents of Lime Village and Stony River.
Unit 17(A, that portion west of the Izavieknik River, Upper Togiak Lake, Togiak Lake, and the main course of the Togiak River.	Caribou	Residents of Goodnews Bay, Platinum, Quinhagak, Eek, Tuntutuliak, and Napakiak.
Unit 17(A)—That portion north of Togiak Lake that includes Izavieknik River drainages.	Caribou	Residents of Akiak, Akiachak, and Tuluksak.
17(A) and (B), those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Caribou	Residents of Kwethluk.
Unit 17(B), that portion of Togiak National Wildlife Refuge within Unit 17(B).	Caribou	Residents of Goodnews Bay, Platinum, Quinhagak, Eek, Akiak, Akiachak and Tuluksak, Tuntutuliak, and Napakiak.

Area	Species	Determination
17(A) and (B), those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Moose	Residents of Kwethluk.
17(A)	Moose	Residents of Unit 17 and residents of Goodnews Bay and Platinum; however, no subsistence for residents of Akiachak, Akiak and Quinhagak.
Unit 17(A)—That portion north of Togiak Lake that includes Izavieknik River drainages.	Moose	Residents of Akiak, Akiachak.
Unit 17(B)—That portion within the Togiak National Wildlife Refuge.	Moose	Residents of Akiak, Akiachak.
17(B) and (C)	Moose	Residents of Unit 17, and residents of Nondalton, Levelock, Goodnews Bay, and Platinum.
17	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
17	Beaver	Residents of Units 9(A), (B), (C), (E), and 17.
Unit 18	Black Bear	Residents of Unit 18, residents of Unit 19(A) living downstream of the Holokuk River, and residents of Holy Cross, Stebbins, St. Michael, Twin Hills, and Togiak.
18	Brown Bear	Residents of Akiachak, Akiak, Eek, Goodnews Bay, Kwethluk, Mt. Village, Napaskiak, Platinum, Quinhagak, St. Mary's, and Tuluksak.
18	Caribou (Kilbuck caribou herd only).	INTERIM DETERMINATION BY FEDERAL SUBSISTENCE BOARD (12/18/91): residents of Tuluksak, Akiak, Akiachak, Kwethluk, Bethel, Oscarville, Napaskiak, Napakiak, Kasigluk, Atmanthluak, Nunapitchuk, Tuntutuliak, Eek, Quinhagak, Goodnews Bay, Platinum, Togiak, and Twin Hills.
18, north of the Yukon River	Caribou (except Kilbuck caribou herd).	Residents of Alakanuk, Andreafsky, Chevak, Emmonak, Hooper Bay, Kotlik, Kwethluk, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Marys, St. Michael, Scammon Bay, Sheldon Point, and Stebbins.
18, remainder	Caribou (except Kilbuck caribou herd).	Residents of Kwethluk.
18, that portion of the Yukon River drainage upstream of Russian Mission and that portion of the Kuskokwim River drainage upstream of, but not including the Tuluksak River drainage.	Moose	Residents of Unit 18 and residents of Upper Kalskag, Lower Kalskag, Aniak, and Chuathbaluk.
18, remainder	Moose	Residents of Unit 18 and residents of Upper Kalskag and Lower Kalskag.
18	Muskox	No Federal subsistence priority.
18	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 19(C),(D)	Bison	No Federal subsistence priority.
19(A) and (B)	Brown Bear	Residents of Units 19 and 18 within the Kuskokwim River drainage upstream from, and including, the Johnson River.
19(C)	Brown Bear	No Federal subsistence priority.
19(D)	Brown Bear	Residents of Units 19(A) and (D), and residents of Tulusak and Lower Kalskag.
19(A) and (B)	Caribou	Residents of Units 19(A) and 19(B), residents of Unit 18 within the Kuskokwim River drainage upstream from, and including, the Johnson River, and residents of St. Marys, Marshall, Pilot Station, Russian Mission.
19(C)	Caribou	Residents of Unit 19(C), and residents of Lime Village, McGrath, Nikolai, and Telida.
19(D)	Caribou	Residents of Unit 19(D), and residents of Lime Village, Sleetmute, and Stony River.
19(A) and (B)	Moose	Residents of Unit 18 within Kuskokwim River drainage upstream from and including the Johnson River, and Unit 19.
Unit 19(B), west of the Kogrukluk River	Moose	Residents of Eek and Quinhagak.
19(C)	Moose	Residents of Unit 19.
19(D)	Moose	Residents of Unit 19 and residents of Lake Minchumina.
19	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 20(D)	Bison	No Federal subsistence priority.
20(F)	Black Bear	Residents of Unit 20(F) and residents of Stevens Village and Manley.

Area	Species	Determination
20(E)	Brown Bear	Residents of Unit 12 and Dot Lake.
20(F)	Brown Bear	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20(A)	Caribou	Residents of Cantwell, Nenana, and those domiciled between milepost 216 and 239 of the Parks Highway. No subsistence priority for residents of households of the Denali National Park Headquarters.
20(B)	Caribou	Residents of Unit 20(B), Nenana, and Tanana.
20(C)	Caribou	Residents of Unit 20(C) living east of the Teklanika River, residents of Cantwell, Lake Minchumina, Manley Hot Springs, Minto, Nenena, Nikolai, Tanana, Talida, and those domiciled between milepost 216 and 239 of the Parks Highway and between milepost 300 and 309. No subsistence priority for residents of households of the Denali National Park Headquarters.
20(D) and (E)	Caribou	Residents of 20(D), 20(E), and Unit 12 north of the Wrangell-St. Elias National Park and Preserve.
20(F)	Caribou	Residents of 20(F), 25(D), and Manley.
20(A)	Moose	Residents of Cantwell, Minto, and Nenana, McKinley Village, the area along the Parks Highway between mileposts 216 and 239, except no subsistence for residents of households of the Denali National Park Headquarters.
20(B)	Moose	Minto Flats Management Area—residents of Minto and Nenana.
20(B)	Moose	Remainder—residents of Unit 20(B), and residents of Nenana and Tanana.
20(C)	Moose	Residents of Unit 20(C) (except that portion within Denali National Park and Preserve and that portion east of the Teklanika River), and residents of Cantwell, Manley, Minto, Nenana, the Parks Highway from milepost 300–309, Nikolai, Tanana, Telida, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239. No subsistence for residents of households of the Denali National Park Headquarters.
20(D)	Moose	Residents of Unit 20(D) and residents of Tanacross.
20(F)	Moose	Residents of Unit 20(F), Manley, Minto, and Stevens Village.
20(F)	Wolf	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
20(D)	Grouse, (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
20(D)	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
Unit 21	Brown Bear	Residents of Units 21 and 23.
21(A)	Caribou	Residents of Units 21(A), 21(D), 21(E), Aniak, Chuathbaluk, Crooked Creek, McGrath, and Takotna.
21(B) and (C)	Caribou	Residents of Units 21(B), 21(C), 21(D), and Tanana.
21(D)	Caribou	Residents of Units 21(B), 21(C), 21(D), and Huslia.
21(E)	Caribou	Residents of Units 21(A), 21(E) and Aniak, Chuathbaluk, Crooked Creek, McGrath, and Takotna.
21(A)	Moose	Residents of Units 21(A), (E), Takotna, McGrath, Aniak, and Crooked Creek.
21(B) and (C)	Moose	Residents of Units 21(B) and (C), Tanana, Ruby, and Galena.
21(D)	Moose	Residents of Units 21(D), Huslia, and Ruby.
21(E)	Moose	Residents of Unit 21(E) and residents of Russian Mission.
21	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 22(A)	Black Bear	Residents of Unit 22(A) and Koyuk.
22(B)	Black Bear	Residents of Unit 22(B).
22(C), (D), and (E)	Black Bear	No Federal subsistence priority.
22	Brown Bear	Residents of Unit 22.

Area	Species	Determination
22(A)	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24, and residents of Kotlik, Emmonak, Hooper Bay, Scammon Bay, Chevak, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Marys, Sheldon Point, and Alakanuk.
22, remainder	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24.
22	Moose	Residents of Unit 22.
22(B)	Muskox	Residents of Unit 22(B).
22(C)	Muskox	Residents of Unit 22(C).
22(D)	Muskox	Residents of Unit 22(D) excluding St. Lawrence Island.
22(E)	Muskox	Residents of Unit 22(E) excluding Little Diomede Island.
22	Wolf	Residents of Units 23, 22, 21(D) north and west of the Yukon River, and residents of Kotlik.
22	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
22	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
Unit 23	Black Bear	Residents of Unit 23, Alatna, Allakaket, Bettles, Evansville, Galena, Hughes, Huslia, and Koyukuk.
23	Black Bear	Residents of Units 21 and 23.
23	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, residents of Galena, and residents of Units 22, 23, 24 including residents of Wiseman but not including other residents of the Dalton Highway Corridor Management Area, and 26(A).
23	Moose	Residents of Unit 23.
23, south of Kotzebue Sound and west of and including the Buckland River drainage.	Muskox	Residents of Unit 23 South of Kotzebue Sound and west of and including the Buckland River drainage.
23, remainder	Muskox	Residents of Unit 23 east and north of the Buckland River drainage.
23	Sheep	Residents of Point Lay and Unit 23 north of the Arctic Circle.
23	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
23	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
23	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
Unit 24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Black Bear	Residents of Stevens Village and residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, remainder	Black Bear	Residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Brown Bear	Residents of Stevens Village and residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, remainder	Brown Bear	Residents of Unit 24 including Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24	Caribou	Residents of Unit 24, Galena, Kobuk, Koyukuk, Stevens Village, and Tanana.
24	Moose	Residents of Unit 24, Koyukuk, and Galena.
24	Sheep	Residents of Unit 24 residing north of the Arctic Circle and residents of Allakaket, Alatna, Hughes, and Huslia.
24	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 25(D)	Black Bear	Residents of Unit 25(D).
25(D)	Brown Bear	Residents of Unit 25(D).
25, remainder	Brown Bear	No Federal subsistence priority.
25(D)	Caribou	Residents of 20(F), 25(D), and Manley.
25(A)	Moose	Residents of Units 25(A) and 25(D).
25(D) West	Moose	Residents of Beaver, Birch Creek, and Stevens Village.
25(D), remainder	Moose	Residents of Remainder of Unit 25.
25(A)	Sheep	Residents of Arctic Village, Chalkytsik, Fort Yukon, Kaktovik, and Venetie.
25(B) and (C)	Sheep	No Federal subsistence priority.

Area	Species	Determination
25(D)	Wolf	Residents of Unit 25(D).
25, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 26	Brown Bear	Residents of Unit 26 (except the Prudhoe Bay-Deadhorse, Industrial Complex) and residents of Anaktuvuk Pass and Point Hope.
26(A)	Caribou	Residents of Unit 26, Anaktuvuk Pass and Point Hope.
26(B)	Caribou	Residents of Unit 26, Anaktuvuk Pass and Point Hope, and Wiseman.
26(C)	Caribou	Residents of Unit 26, Anaktuvuk Pass and Point Hope.
26	Moose	Residents of Unit 26, (except the Prudhoe Bay-Deadhorse Industrial Complex), and residents of Point Hope and Anaktuvuk Pass.
26(a)	Muskox	Residents of Anaktuvuk Pass, Atqasuk, Barrow, Nuiqsut, Point Hope, Point Lay, and Wainwright.
26(B)	Muskox	Residents of Anaktuvuk Pass, Nuiqsut, and Kaktovik.
26(C)	Muskox	Residents of Kaktovik.
26(A)	Sheep	Residents of Unit 26, Anaktuvuk Pass and Point Hope.
26(B)	Sheep	Residents of Unit 26, Anaktuvuk Pass and Point Hope, and Wiseman.
26(C)	Sheep	Residents of Unit 26, Anaktuvuk Pass, Anaktuvik Pass, Arctic Village, Chalkytsik, Fort Yukon, Point Hope, and Venetie.
26	Wolf	Residents of Unit 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.

* * * * *

Subpart D—Subsistence Taking of Fish and Wildlife

4. In Subpart D of 36 CFR part 242 and 50 CFR part 100, § ____.25 is added effective July 1, 2000, through June 30, 2001, to read as follows:

§ ____.25 Subsistence taking of wildlife.

(a) Definitions. The following definitions shall apply to all regulations contained in this section:

ADF&G means the Alaska Department of Fish and Game.

Aircraft means any kind of airplane, glider, or other device used to transport people or equipment through the air, excluding helicopters.

Airport means an airport listed in the Federal Aviation Administration, Alaska Airman's Guide and chart supplement.

Animal means those species with a vertebral column (backbone).

Antler means one or more solid, horn-like appendages protruding from the head of a caribou, deer, elk, or moose.

Antlered means any caribou, deer, elk, or moose having at least one visible antler.

Antlerless means any caribou, deer, elk, or moose not having visible antlers attached to the skull.

Bear means black bear, or brown or grizzly bear.

Bow means a longbow, recurve bow, or compound bow, excluding a crossbow, or any bow equipped with a mechanical device that holds arrows at full draw.

Broadhead means an arrowhead that is not barbed and has two or more steel cutting edges having a minimum cutting diameter of not less than seven-eighths inch.

Brow tine means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

Buck means any male deer.

Bull means any male moose, caribou, elk, or musk oxen.

Closed season means the time when wildlife may not be taken.

Cub bear means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

Designated hunter means a Federally qualified, licensed hunter who may take all or a portion of another Federally qualified, licensed hunter's harvest limit(s) only under situations approved by the Board.

Edible meat means the breast meat of ptarmigan and grouse, and, those parts of caribou, deer, elk, mountain goat, moose, musk oxen, and Dall sheep that are typically used for human consumption, which are: the meat of the ribs, neck, brisket, front quarters as far as the distal (bottom) joint of the radius-ulna (knee), hindquarters as far as the distal joint (bottom) of the tibia-fibula (hock) and that portion of the animal between the front and hindquarters; however, *edible meat* of species listed above does not include: meat of the head, meat that has been damaged and made inedible by the method of taking, bones, sinew, and incidental meat reasonably lost as a result of boning or close trimming of the bones, or viscera. For black bear, brown and grizzly bear, ''edible meat'' means the meat of the front quarter and hindquarters and meat along the backbone (backstrap).

Federally-qualified subsistence user means a rural Alaska resident qualified to harvest fish or wildlife on Federal public lands in accordance with the Federal Subsistence Management Regulations in this part.

Fifty-inch (50-inch) moose means a bull moose with an antler spread of 50 inches or more.

Full curl horn means the horn of a Dall sheep ram; the tip of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken, or that the sheep is at least 8 years of age as determined by horn growth annuli.

Furbearer means a beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, red squirrel, flying squirrel, ground squirrel, marmot, wolf, or wolverine.

Grouse collectively refers to all species found in Alaska, including spruce grouse, ruffed grouse, blue grouse, and sharp-tailed grouse.

Hare or hares collectively refers to all species of hares (commonly called rabbits) in Alaska and includes snowshoe hare and tundra hare.

Harvest limit means the number of any one species permitted to be taken by any one person in a Unit or portion of a Unit in which the taking occurs.

Highway means the driveable surface of any constructed road.

Household means that group of people residing in the same residence.

Hunting means the taking of wildlife within established hunting seasons with archery equipment or firearms, and as authorized by a required hunting license.

Marmot collectively refers to all species of marmot that occur in Alaska including the hoary marmot, Alaska marmot, and the woodchuck.

Motorized vehicle means a motor-driven land, air, or water conveyance.

Open season means the time when wildlife may be taken by hunting or trapping; an open season includes the first and last days of the prescribed season period.

Otter means river or land otter only, excluding sea otter.

Permit hunt means a hunt for which State or Federal permits are issued by registration or other means.

Poison means any substance that is toxic or poisonous upon contact or ingestion.

Possession means having direct physical control of wildlife at a given time or having both the power and intention to exercise dominion or control of wildlife either directly or through another person or persons.

Ptarmigan collectively refers to all species found in Alaska, including white-tailed ptarmigan, rock ptarmigan, and willow ptarmigan.

Ram means a male Dall sheep.

Registration permit means a permit that authorizes hunting and is issued to a person who agrees to the specified hunting conditions. Hunting permitted by a registration permit begins on an announced date and continues throughout the open season, or until the season is closed by Board action. Registration permits are issued in the order applications are received and/or are based on priorities as determined by 50 CFR 100.17 and 36 CFR 242.17.

Sealing means placing a mark or tag on a portion of a harvested animal by an authorized representative of the ADF&G; *sealing* includes collecting and recording information about the conditions under which the animal was harvested, and measurements of the specimen submitted for sealing or surrendering a specific portion of the animal for biological information.

Seven-eighths curl horn means the horn of a male Dall sheep, the tip of which has grown through seven-eights (315 degrees) of a circle, described by the outer surface of the horn, as viewed from the side, or with both horns broken.

Skin, hide, pelt, or fur means any tanned or untanned external covering of an animal's body; excluding bear. The skin, hide, fur, or pelt of a bear shall mean the entire external covering with claws attached.

Spike-fork moose means a bull moose with only one or two tines on either antler; male calves are not spike-fork bulls.

Take or *Taking* means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

Tine or *antler point* refers to any point on an antler, the length of which is greater than its width and is at least one inch.

Transportation means to ship, convey, carry, or transport by any means whatever and deliver or receive for such shipment, conveyance, carriage, or transportation.

Trapping means the taking of furbearers within established trapping seasons and with a required trapping license.

Unclassified wildlife or unclassified species means all species of animals not otherwise classified by the definitions in this paragraph (a), or regulated under other Federal law as listed in paragraph (i) of this section.

Ungulate means any species of hoofed mammal, including deer, caribou, elk, moose, mountain goat, Dall sheep, and musk oxen.

Unit means one of the 26 geographical areas in the State of Alaska known as Game Management Units, or GMU, and collectively listed in this section as Units.

Wildlife means any hare (rabbit), ptarmigan, grouse, ungulate, bear, furbearer, or unclassified species and includes any part, product, egg, or offspring thereof, or carcass or part thereof.

(b) Hunters may take wildlife for subsistence uses by any method, except as prohibited in this section or by other Federal statute. Taking wildlife for subsistence uses by a prohibited method is a violation of this part. Seasons are closed unless opened by Federal regulation. Hunting or trapping during a closed season or in an area closed by this part is prohibited.

(1) Except for special provisions found at paragraphs (k)(1) through (26) of this section, the following methods and means of taking wildlife for subsistence uses are prohibited:

(i) Shooting from, on, or across a highway;

(ii) Using any poison;

(iii) Using a helicopter in any manner, including transportation of individuals, equipment, or wildlife; however, this prohibition does not apply to transportation of an individual, gear, or wildlife during an emergency rescue operation in a life-threatening situation;

(iv) Taking wildlife from a motorized land or air vehicle, when that vehicle is in motion or from a motor-driven boat when the boat's progress from the motor's power has not ceased;

(v) Using a motorized vehicle to drive, herd, or molest wildlife;

(vi) Using or being aided by use of a machine gun, set gun, or a shotgun larger than 10 gauge;

(vii) Using a firearm other than a shotgun, muzzle-loaded rifle, rifle or pistol using center-firing cartridges, for the taking of ungulates, bear, wolves or wolverine, except that—

(A) An individual in possession of a valid trapping license may use a firearm that shoots rimfire cartridges to take wolves and wolverine;

(B) Only a muzzle-loading rifle of .54-caliber or larger, or a .45-caliber muzzle-loading rifle with a 250-grain, or larger, elongated slug may be used to take brown bear, black bear, elk, moose, musk oxen and mountain goat;

(viii) Using or being aided by use of a pit, fire, artificial light, radio communication, artificial salt lick, explosive, barbed arrow, bomb, smoke, chemical, conventional steel trap with a jaw spread over nine inches, or conibear style trap with a jaw spread over 11 inches;

(ix) Using a snare, except that an individual in possession of a valid hunting license may use nets and snares to take unclassified wildlife, ptarmigan, grouse, or hares; and, individuals in possession of a valid trapping license may use snares to take furbearers;

(x) Using a trap to take ungulates or bear;

(xi) Using hooks to physically snag, impale, or otherwise take wildlife; however, hooks may be used as a trap drag;

(xii) Using a crossbow to take ungulates, bear, wolf, or wolverine in any area restricted to hunting by bow and arrow only;

(xiii) Taking of ungulates, bear, wolf, or wolverine with a bow, unless the bow is capable of casting a 7/8 inch wide broadhead-tipped arrow at least 175 yards horizontally, and the arrow and broadhead together weigh at least one ounce (437.5 grains);

(xiv) Using bait for taking ungulates, bear, wolf, or wolverine; except, you may use bait to take wolves and wolverine with a trapping license, and, you may use bait to take black bears with a hunting license as authorized in Unit-specific regulations at paragraphs (k)(1) through (26) of this section. Baiting of black bears is subject to the following restrictions:

(A) Before establishing a black bear bait station, you must register the site with ADF&G;

(B) When using bait you must clearly mark the site with a sign reading ''black bear bait station'' that also displays your hunting license number and ADF&G assigned number;

(C) You may use only biodegradable materials for bait; you may use only the head, bones, viscera, or skin of legally harvested fish and wildlife for bait;

(D) You may not use bait within one-quarter mile of a publicly maintained road or trail;

(E) You may not use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground, or developed recreational facility;

(F) When using bait, you must remove litter and equipment from the bait station site when done hunting;

(G) You may not give or receive payment for the use of a bait station, including barter or exchange of goods;

(H) You may not have more than two bait stations with bait present at any one time;

(xv) Taking swimming ungulates, bears, wolves or wolverine;

(xvi) Taking or assisting in the taking of ungulates, bear, wolves, wolverine, or other furbearers before 3 a.m. following the day in which airborne travel occurred (except for flights in regularly scheduled commercial aircraft); however, this restriction does not apply to subsistence taking of deer;

(xvii) Taking a bear cub or a sow accompanied by cub(s).

(2) Wildlife taken in defense of life or property is not a subsistence use; wildlife so taken is subject to State regulations.

(3) The following methods and means of trapping furbearers, for subsistence uses pursuant to the requirements of a trapping license are prohibited, in addition to the prohibitions listed at paragraph (b)(1) of this section:

(i) Disturbing or destroying a den, except that you may disturb a muskrat pushup or feeding house in the course of trapping;

(ii) Disturbing or destroying any beaver house;

(iii) Taking beaver by any means other than a steel trap or snare, except that you may use firearms in certain Units with established seasons as identified in Unit-specific regulations found in this subpart;

(iv) Taking otter with a steel trap having a jaw spread of less than five and seven-eighths inches during any closed mink and marten season in the same Unit;

(v) Using a net, or fish trap (except a blackfish or fyke trap);

(vi) Taking beaver in the Minto Flats Management Area with the use of an aircraft for ground transportation, or by landing within one mile of a beaver trap or set used by the transported person;

(vii) Taking or assisting in the taking of furbearers by firearm before 3:00 a.m. on the day following the day on which airborne travel occurred; however, this does not apply to a trapper using a firearm to dispatch furbearers caught in a trap or snare.

(c) Possession and transportation of wildlife. (1) Except as specified in paragraphs (c)(3)(ii) or (c)(4) of this section, or as otherwise provided, you may not take a species of wildlife in any Unit, or portion of a Unit, if your total take of that species already obtained anywhere in the State under Federal and State regulations equals or exceeds the harvest limit in that Unit.

(2) An animal taken under Federal or State regulations by any member of a community with an established community harvest limit for that species counts toward the community harvest limit for that species. Except for wildlife taken pursuant to § ____.6(f)(3) or as otherwise provided for by this Part, an animal taken as part of a community harvest limit counts toward every community member's harvest limit for that species taken under Federal or State of Alaska regulations.

(3) Harvest limits. (i) Harvest limits, including those related to ceremonial uses, authorized by this section and harvest limits established in State regulations may not be accumulated.

(ii) Wildlife taken by a designated hunter for another person pursuant to § ____.6(f)(2), counts toward the individual harvest limit of the person for whom the wildlife is taken.

(4) The harvest limit specified for a trapping season for a species and the harvest limit set for a hunting season for the same species are separate and distinct. This means that if you have taken a harvest limit for a particular species under a trapping season, you may take additional animals under the harvest limit specified for a hunting season or vice versa.

(5) A brown/grizzly bear taken in a Unit or portion of a Unit having a harvest limit of one brown/grizzly bear per year counts against a one brown/grizzly bear every four regulatory years harvest limit in other Units; an individual may not take more than one brown/grizzly bear in a regulatory year.

(6) A harvest limit applies to the number of animals that can be taken during a regulatory year; however, harvest limits for grouse, ptarmigan, and caribou (in some Units) are regulated by the number that may be taken per day. Harvest limits of grouse and ptarmigan are also regulated by the number that can be held in possession.

(7) Unless otherwise provided, any person who gives or receives wildlife shall furnish, upon a request made by a Federal or State agent, a signed statement describing the following: names and addresses of persons who gave and received wildlife, the time and place that the wildlife was taken, and identification of species transferred. Where a qualified subsistence user has designated another qualified subsistence user to take wildlife on his or her behalf in accordance with § ____.6, the permit shall be furnished in place of a signed statement.

(8) A rural Alaska resident who has been designated to take wildlife on behalf of another rural Alaska resident in accordance with § ____.6, shall promptly deliver the wildlife to that rural Alaska resident.

(9) You may not possess, transport, give, receive, or barter wildlife that was taken in violation of Federal or State statutes or a regulation promulgated thereunder.

(10) Evidence of sex and identity. (i) If subsistence take of Dall sheep is restricted to a ram, you may not possess or transport a harvested sheep unless both horns accompany the animal.

(ii) If the subsistence taking of an ungulate, except sheep, is restricted to one sex in the local area, you may not possess or transport the carcass of an animal taken in that area unless sufficient portions of the external sex organs remain attached to indicate conclusively the sex of the animal, except in Units 11 and 13 where you may possess either sufficient portions of the external sex organs (still attached to a portion of the carcass) or the head (with or without antlers attached; however, the antler stumps must remain attached), to indicate the sex of the harvested moose; however, this paragraph (c)(10)(ii) does not apply to the carcass of an ungulate that has been butchered and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(iii) If a moose harvest limit includes an antler size or configuration restriction, you may not possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. If you possess a set of antlers with less than the required number of brow tines on one antler, you must leave the antlers naturally attached to the unbroken, uncut skull plate; however, this paragraph (c)(10)(iii) does not apply to a moose carcass or its parts that have been butchered and placed in

storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

(11) You must leave all edible meat from caribou and moose harvested in Units 9(B), 17, and 19(B) prior to October 1 on the bones of the front quarters and hind quarters until you remove the meat from the field or process it for human consumption.

(d) If you take an animal that has been marked or tagged for scientific studies, you must, within a reasonable time, notify the ADF&G or the agency identified on the collar or marker, when and where the animal was taken. You also must retain any ear tag, collar, radio, tattoo, or other identification with the hide until it is sealed, if sealing is required; in all cases, you must return any identification equipment to the ADF&G or to an agency identified on such equipment.

(e) Sealing of bear skins and skulls. (1) Sealing requirements for bear shall apply to brown bears taken in all Units, except as specified in this paragraph, and black bears of all color phases taken in Units 1–7, 11–17, and 20.

(2) You may not possess or transport from Alaska, the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of ADF&G in accordance with State or Federal regulations, except that the skin and skull of a brown bear taken under a registration permit in the Western Alaska Brown Bear Management Area, the Northwest Alaska Brown Bear Management Area, Unit 5, or Unit 9(B) need not be sealed unless removed from the area.

(3) You must keep a bear skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin; however, this provision shall not apply to brown bears taken within the Western Alaska Brown Bear Management Area, the Northwest Alaska Brown Bear Management Area, Unit 5, or Unit 9(B) which are not removed from the Management Area or Unit.

(i) In areas where sealing is required by Federal regulations, you may not possess or transport the hide of a bear which does not have the penis sheath or vaginal orifice naturally attached to indicate conclusively the sex of the bear.

(ii) If the skin or skull of a bear taken in the Western Alaska Brown Bear Management Area is removed from the area, you must first have it sealed by an ADF&G representative in Bethel, Dillingham, or McGrath; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iii) If you remove the skin or skull of a bear taken in the Northwestern Alaska Brown Bear Management Area from the area or present it for commercial tanning within the Management Area, you must first have it sealed by an ADF&G representative in Barrow, Fairbanks, Galena, Nome, or Kotzebue; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iv) If you remove the skin or skull of a bear taken in Unit 5 from the area, you must first have it sealed by an ADF&G representative in Yakutat; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(4) You may not falsify any information required on the sealing certificate or temporary sealing form provided by the ADF&G in accordance with State regulations.

(f) Sealing of beaver, lynx, marten, otter, wolf, and wolverine. You may not possess or transport from Alaska the untanned skin of a marten taken in Units 1–5, 7, 13(E), and 14–16 or the untanned skin of a beaver, lynx, otter, wolf, or wolverine, whether taken inside or outside the State, unless the skin has been sealed by an authorized representative of ADF&G in accordance with State regulations. In Unit 18, you must obtain an ADF&G seal for beaver skins only if they are to be sold or commercially sold.

(1) You must seal any wolf taken in Unit 2 on or before the 30th day after the date of taking.

(2) You must leave the radius and ulna of the left foreleg naturally attached to the hide of any wolf taken in Units 1–5 until the hide is sealed.

(g) A person who takes a species listed in paragraph (f) of this section but who is unable to present the skin in person, must complete and sign a temporary sealing form and ensure that the completed temporary sealing form and skin are presented to an authorized representative of ADF&G for sealing consistent with requirements listed in paragraph (f) of this section.

(h) Utilization of wildlife. (1) You may not use wildlife as food for a dog or furbearer, or as bait, except for the following:

(i) The hide, skin, viscera, head, or bones of wildlife;

(ii) The skinned carcass of a furbearer;

(iii) Squirrels, hares (rabbits), grouse, and ptarmigan; however, you may not use the breast meat of grouse and ptarmigan as animal food or bait;

(iv) Unclassified wildlife.

(2) If you take wildlife for subsistence, you must salvage the following parts for human use:

(i) The hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel, or otter;

(ii) The hide and edible meat of a brown bear, except that the hide of brown bears taken in the Western and Northwestern Alaska Brown Bear Management Areas and Units 5 and 9(B) need not be salvaged;

(iii) The hide and edible meat of a black bear;

(iv) The hide or meat of squirrels, hares (rabbits), marmots, beaver, muskrats, or unclassified wildlife.

(3) You must salvage the edible meat of ungulates, bear, grouse and ptarmigan.

(4) Failure to salvage the edible meat may not be a violation if such failure is caused by circumstances beyond the control of a person, including theft of the harvested wildlife, unanticipated weather conditions, or unavoidable loss to another animal.

(i) The regulations found in this section do not apply to the subsistence taking and use of wildlife regulated pursuant to the Fur Seal Act of 1966 (80 Stat. 1091, 16 U.S.C. 1187), the Endangered Species Act of 1973 (87 Stat. 884, 16 U.S.C. 1531–1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361–1407), and the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703–711), or any amendments to these Acts. The taking and use of wildlife, covered by these Acts, will conform to the specific provisions contained in these Acts, as amended, and any implementing regulations.

(j) Rural residents, nonrural residents, and nonresidents not specifically prohibited by Federal regulations from hunting or trapping on public lands in an area, may hunt or trap on public lands in accordance with the appropriate State regulations.

(k) Unit regulations. You may take for subsistence unclassified wildlife, all squirrel species, and marmots in all Units, without harvest limits, for the period of July 1–June 30. You may not take for subsistence wildlife outside established Unit seasons, or in excess of the established Unit harvest limits, unless otherwise provided for by the Board. You may take wildlife under State regulations on public lands, except as otherwise restricted at paragraphs (k)(1) through (26) of this section. Additional Unit-specific restrictions or allowances for subsistence taking of wildlife are identified at paragraphs (k)(1) through (26) of this section.

(1) *Unit 1.* Unit 1 consists of all mainland drainages from Dixon Entrance to Cape Fairweather, and those islands east of the center line of Clarence Strait from Dixon Entrance to Caamano Point, and all islands in Stephens Passage and Lynn Canal north of Taku Inlet:

(i) Unit 1(A) consists of all drainages south of the latitude of Lemesurier Point including all drainages into Behm Canal, excluding all drainages of Ernest Sound;

(ii) Unit 1(B) consists of all drainages between the latitude of Lemesurier Point and the latitude of Cape Fanshaw including all drainages of Ernest Sound and Farragut Bay, and including the islands east of the center lines of Frederick Sound, Dry Strait (between Sergief and Kadin Islands), Eastern Passage, Blake Channel (excluding Blake Island), Ernest Sound, and Seward Passage;

(iii) Unit 1(C) consists of that portion of Unit 1 draining into Stephens Passage and Lynn Canal north of Cape Fanshaw and south of the latitude of Eldred Rock including Berners Bay, Sullivan Island, and all mainland portions north of Chichagof Island and south of the latitude of Eldred Rock, excluding drainages into Farragut Bay;

(iv) Unit 1(D) consists of that portion of Unit 1 north of the latitude of Eldred Rock, excluding Sullivan Island and the drainages of Berners Bay;

(v) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistence uses;

(B) Unit 1(A)—in the Hyder area, the Salmon River drainage downstream from the Riverside Mine, excluding the Thumb Creek drainage, is closed to the taking of bear;

(C) Unit 1(B)—the Anan Creek drainage within one mile of Anan Creek downstream from the mouth of Anan Lake, including the area within a one mile radius from the mouth of Anan Creek Lagoon, is closed to the taking of black bear and brown bear;

(D) Unit 1(C):

(*1*) You may not hunt within one-fourth mile of Mendenhall Lake, the U.S. Forest Service Mendenhall Glacier Visitor's Center, and the Center's parking area;

(*2*) You may not take mountain goat in the area of Mt. Bullard bounded by the Mendenhall Glacier, Nugget Creek from its mouth to its confluence with Goat Creek, and a line from the mouth of Goat Creek north to the Mendenhall Glacier;

(vi) You may not trap furbearers for subsistence uses in Unit 1(C), Juneau area, on the following public lands:

(A) A strip within one-quarter mile of the mainland coast between the end of Thane Road and the end of Glacier Highway at Echo Cove;

(B) That area of the Mendenhall Valley bounded on the south by the Glacier Highway, on the west by the Mendenhall Loop Road and Montana Creek Road and Spur Road to Mendenhall Lake, on the north by Mendenhall Lake, and on the east by the Mendenhall Loop Road and Forest Service Glacier Spur Road to the Forest Service Visitor Center;

(C) That area within the U.S. Forest Service Mendenhall Glacier Recreation Area;

(D) A strip within one-quarter mile of the following trails as designated on U.S. Geological Survey maps: Herbert Glacier Trail, Windfall Lake Trail, Peterson Lake Trail, Spaulding Meadows Trail (including the loop trail), Nugget Creek Trail, Outer Point Trail, Dan Moller Trail, Perseverance Trail, Granite Creek Trail, Mt. Roberts Trail and Nelson Water Supply Trail, Sheep Creek Trail, and Point Bishop Trail;

(vii) Unit-specific regulations:

(A) You may hunt black bear with bait in Units 1(A), 1(B), and 1(D) between April 15 and June 15;

(B) You may not use boats to take ungulates, bear, wolves, or wolverine, unless you are certified as disabled;

(C) You may take wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, if:

(*1*) The person organizing the religious ceremony, or designee, contacts the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, and the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
HUNTING	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Brown Bear: 1 bear every four regulatory years by State registration permit only	Sept. 15–Dec. 31. Mar. 15–May 31.
Deer:	
Unit 1(A)—4 antlered deer	Aug. 1–Dec. 31.
Unit 1(B)—2 antlered deer	Aug. 1–Dec. 31.
Unit 1(C)—4 deer; however, antlerless deer may be taken only from Sept. 15–Dec. 31	Aug. 1–Dec. 31.
Goat:	
Unit 1(A)—Revillagigedo Island only	No open season.
Unit 1(B)—that portion north of LeConte Bay. 1 goat by State registration permit only; the taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.

Harvest limits	Open season
Unit 1(B)—that portion between LeConte Bay and the North Fork of Bradfield River/Canal. 2 goats; a State registration permit will be required for the taking of the first goat and a Federal registration permit for the taking of a second goat; the taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.
Unit 1(A) and Unit 1(B)—remainder—2 goats by State registration permit only	Aug. 1–Dec. 31.
Unit 1(C)—that portion draining into Lynn Canal and Stephens Passage between Antler River and Eagle Glacier and River, and all drainages of the Chilkat Range south of the Endicott River—1 goat by State registration permit only.	Oct. 1–Nov. 30.
Unit 1(C)—that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and River and Taku Glacier.	No open season.
Unit 1(C)—remainder—1 goat by State registration permit only.	Aug. 1–Nov. 30.
Unit 1(D)—that portion lying north of the Katzehin River and northeast of the Haines highway—1 goat by State registration permit only.	Sept. 15–Nov. 30.
Unit 1(D)—that portion lying between Taiya Inlet and River and the White Pass and Yukon Railroad	No open season.
Unit 1(D)—remainder—1 goat by State registration permit only.	Aug. 1–Dec. 31.
Moose:	
Unit 1(A)—1 antlered bull	Sept. 15–Oct. 15.
Unit 1(B)—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, by State registration permit only.	Sept. 15–Oct. 15.
Unit 1(C), that portion south of Point Hobart including all Port Houghton drainages—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, by State registration permit only.	Sept. 15–Oct. 15.
Unit 1(C)—remainder, excluding drainages of Berners Bay—1 antlered bull by State registration permit only	Sept. 15–Oct. 15.
Unit 1(D)	No open season.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
TRAPPING	
Beaver: Unit 1(A), (B), and (C)—No limit	Dec. 1–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(*2*) *Unit 2.* Unit 2 consists of Prince of Wales Island and all islands west of the center lines of Clarence Strait and Kashevarof Passage, south and east of the center lines of Sumner Strait, and east of the longitude of the western most point on Warren Island.

(i) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not use boats to take ungulates, bear, wolves, or wolverine, unless you are certified as disabled;

(C) You may take wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, if:

(*1*) The person organizing the religious ceremony, or designee, contacts the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, and the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(ii) [Reserved]

Harvest limits	Open season
HUNTING	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.

Harvest limits	Open season
Deer: 4 deer; however, no more than one may be an antlerless deer. Antlerless deer may be taken only during the period Oct. 15–Dec. 31 by Federal registration permit only.	Aug. 1–Dec. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Dec. 1–Mar. 31.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
TRAPPING	
Beaver: No limit	Dec. 1–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Dec. 1–Mar. 31.
Wolverine: No limit	Nov. 10–Apr. 30.

(3) *Unit 3.* (i) Unit 3 consists of all islands west of Unit 1(B), north of Unit 2, south of the center line of Frederick Sound, and east of the center line of Chatham Strait including Coronation, Kuiu, Kupreanof, Mitkof, Zarembo, Kashevarof, Woronkofski, Etolin, Wrangell, and Deer Islands.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) In the Petersburg vicinity, you may not take ungulates, bear, wolves, and wolverine along a strip one-fourth mile wide on each side of the Mitkof Highway from Milepost 0 to Crystal Lake campground;

(B) You may not take black bears in the Petersburg Creek drainage on Kupreanof Island;

(C) You may not hunt in the Blind Slough draining into Wrangell Narrows and a strip one-fourth mile wide on each side of Blind Slough, from the hunting closure markers at the southernmost portion of Blind Island to the hunting closure markers one mile south of the Blind Slough bridge.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not use boats to take ungulates, bear, wolves, or wolverine, unless you are certified as disabled;

(C) You may take wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, if:

(*1*) The person organizing the religious ceremony, or designee, contact the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, and the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
HUNTING	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Deer:	
Unit 3—Mitkof Island, Woewodski Island, Butterworth Islands, and that portion of Kupreanof Island which includes Lindenburg Peninsula east of the Portage Bay/Duncan Canal Portage—1 antlered deer by State registration permit only; however, the city limits of Petersburg and Kupreanof are closed to hunting.	Oct. 15–Oct. 31.
Unit 3—remainder—2 antlered deer	Aug. 1–Nov. 30
Moose: 1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler by State registration permit only.	Sept. 15–Oct. 15.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.

Harvest limits	Open season
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
TRAPPING	
Beaver:	
Unit 3—Mitkof Island—No limit	Dec. 1–Apr. 15.
Unit 3—except Mitkof Island—No limit	Dec. 1–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(4) *Unit 4*. (i) Unit 4 consists of all islands south and west of Unit 1(C) and north of Unit 3 including Admiralty, Baranof, Chichagof, Yakobi, Inian, Lemesurier, and Pleasant Islands.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take bears in the Seymour Canal Closed Area (Admiralty Island) including all drainages into northwestern Seymour Canal between Staunch Point and the southernmost tip of the unnamed peninsula separating Swan Cove and King Salmon Bay including Swan and Windfall Islands;

(B) You may not take bears in the Salt Lake Closed Area (Admiralty Island) including all lands within one-fourth mile of Salt Lake above Klutchman Rock at the head of Mitchell Bay;

(C) You may not take brown bears in the Port Althorp Closed Area (Chichagof Island), that area within the Port Althorp watershed south of a line from Point Lucan to Salt Chuck Point (Trap Rock);

(D) You may not use any motorized land vehicle for brown bear hunting in the Northeast Chichagof Controlled Use Area (NECCUA) consisting of all portions of Unit 4 on Chichagof Island north of Tenakee Inlet and east of the drainage divide from the northwest point of Gull Cove to Port Frederick Portage, including all drainages into Port Frederick and Mud Bay;

(E) You may not use any motorized land vehicle for the taking of marten, mink, and weasel on Chichagof Island.

(iii) Unit-specific regulations:

(A) You may take ungulates from a boat. You may not use a boat to take bear, wolves, or wolverine, unless you are certified as disabled;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time;

(C) You may take of wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, if:

(*1*) The person organizing the religious ceremony, or designee, contacts the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, and the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur:

(D) Five Federal registration permits will be issued for the taking of brown bear for educational purposes associated with teaching customary and traditional subsistence harvest and use practices. Any bear taken under an educational permit would count in an individual's one bear every four regulatory years limit.

Harvest limits	Open season
HUNTING	
Brown Bear:	
Unit 4—Chichagof Island south and west of a line that follows the crest of the island from Rock Point (58° N. lat., 136° 21′ W. long.) to Rodgers Point (57° 35′ N. lat., 135° 33′ W. long.) including Yakobi and other adjacent islands; Baranof Island south and west of a line which follows the crest of the island from Nismeni Point (57° 34′ N. lat., 135° 25′ W. long.) to the entrance of Gut Bay (56° 44′ N. lat. 134° 38′ W. long.) including the drainages into Gut Bay and including Kruzof and other adjacent islands—1 bear every four regulatory years by State registration permit only.	Sept. 15–Dec. 31. Mar. 15–May 31.
Unit 4—that portion in the Northeast Chichagof Controlled Use Area—1 bear every four regulatory years by State registration permit only.	Mar. 15–May 20.
Unit 4—remainder—1 bear every four regulatory years by State registration permit only	Sept. 15–Dec. 31. Mar. 15–May 20.
Deer: 6 deer; however, antlerless deer may be taken only from Sept. 15–Jan. 31	Aug. 1–Jan. 31.

Harvest limits	Open season
Goat: 1 goat by State registration permit only	Aug. 1–Dec. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1.–May 15.
TRAPPING	
Beaver:	
Unit 4—that portion east of Chatham Strait—No limit	Dec. 1–May 15.
Remainder of Unit 4	No open season.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten:	
Unit 4—Chichagof Island east of Idaho Inlet and north of Trail River and Tenakee Inlet and north of a line from the headwaters of Trail River to the head of Tenakee Inlet.—No limit.	Dec. 1–Dec. 31.
Remainder of Unit 4—No limit	Dec. 1–Feb. 15.
Mink and Weasel:	
Unit 4—Chichagof Island—No limit	Dec. 1–Dec. 31.
Remainder of Unit 4—No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(5) *Unit 5*. (i) Unit 5 consists of all Gulf of Alaska drainages and islands between Cape Fairweather and the center line of Icy Bay, including the Guyot Hills:

(A) Unit 5(A) consists of all drainages east of Yakutat Bay, Disenchantment Bay, and the eastern edge of Hubbard Glacier, and includes the islands of Yakutat and Disenchantment Bays;

(B) Unit 5(B) consists of the remainder of Unit 5.

(ii) You may not take wildlife for subsistence uses on public lands within Glacier Bay National Park.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not use boats to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled;

(C) You may hunt brown bear in Unit 5 with a Federal registration permit in lieu of a State metal locking tag; if you have obtained a Federal registration permit prior to hunting;

(D) You may take wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, if:

(*1*) The person organizing the religious ceremony, or designee, contacts the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, and the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(E) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer or moose on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
HUNTING	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Brown Bear: 1 bear by Federal registration permit only	Sept. 1–May 31.
Deer:	
Unit 5(A)—1 buck	Nov. 1–Nov. 30.
Unit 5(B)	No open season.
Goat: 1 goat by Federal registration permit only	Aug. 1–Jan. 31.
Moose:	
Unit 5(A), Nunatak Bench—1 moose by State registration permit only. The season will be closed when 5 moose have been taken from the Nunatak Bench.	Nov. 15–Feb. 15.

Harvest limits	Open season
Unit 5(A), except Nunatak Bench—1 antlered bull by Federal registration permit only. The season will be closed when 60 antlered bulls have been taken from the Unit. The season will be closed in that portion west of the Dangerous River when 30 antlered bulls have been taken in that area. From Oct. 8—Oct. 21, public lands will be closed to taking of moose, except by residents of Unit 5(A).	Oct. 8–Nov. 15.
Unit 5(B)—1 antlered bull by State registration permit only. The season will be closed when 25 antlered bulls have been taken from the entirety of Unit 5(B).	Sept. 1–Dec. 15.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
TRAPPING	
Beaver: No limit	Nov. 10–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Nov. 10–Feb. 15.
Mink and Weasel: No limit	Nov. 10–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Nov. 10–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(6) *Unit 6.* (i) Unit 6 consists of all Gulf of Alaska and Prince William Sound drainages from the center line of Icy Bay (excluding the Guyot Hills) to Cape Fairfield including Kayak, Hinchinbrook, Montague, and adjacent islands, and Middleton Island, but excluding the Copper River drainage upstream from Miles Glacier, and excluding the Nellie Juan and Kings River drainages:

(A) Unit 6(A) consists of Gulf of Alaska drainages east of Palm Point near Katalla including Kanak, Wingham, and Kayak Islands;

(B) Unit 6(B) consists of Gulf of Alaska and Copper River Basin drainages west of Palm Point near Katalla, east of the west bank of the Copper River, and east of a line from Flag Point to Cottonwood Point;

(C) Unit 6(C) consists of drainages west of the west bank of the Copper River, and west of a line from Flag Point to Cottonwood Point, and drainages east of the east bank of Rude River and drainages into the eastern shore of Nelson Bay and Orca Inlet;

(D) Unit 6(D) consists of the remainder of Unit 6.

(ii) For the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take mountain goat in the Goat Mountain goat observation area, which consists of that portion of Unit 6(B) bounded on the north by Miles Lake and Miles Glacier, on the south and east by Pleasant Valley River and Pleasant Glacier, and on the west by the Copper River;

(B) You may not take mountain goat in the Heney Range goat observation area, which consists of that portion of Unit 6(C) south of the Copper River Highway and west of the Eyak River.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may take coyotes in Units 6(B) and 6(C) with the aid of artificial lights;

(C) One permit will be issued to the Native Village of Eyak to take one bull moose from Federal lands in Units 6(B) or (C) for their annual Memorial/Sobriety Day potlatch.

Harvest limits	Open season
HUNTING	
Black Bear: 1 bear	Sept. 1–June 30.
Deer: 4 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31	Aug. 1–Dec. 31.
Goats:	
Unit 6(A), (B)—1 goat by State registration permit only	Aug. 20–Jan. 31.
Unit 6(C)	No open season.
Unit 6(D) (subareas RG242, RG243, RG244, RG249, RG266 and RG252 only)—1 goat by Federal registration permit only.	Aug. 20–Jan. 31.
In each of the Unit 6(D) subareas, goat seasons will be closed when harvest limits for that subarea are reached. Harvest quotas are as follows: RG242—2 goats, RG243—4 goats, RG244—2 goats, RG249—4 goats, RG266—4 goats, RG252—1 goat.	
Unit 6(D) (subarea RG245)—The taking of goats is prohibited on all public lands	No open season.
Moose:	
Unit 6(C)—1 cow by Federal registration permit only. (Five permits will be issued.)	Aug. 15–Dec. 31.
Unit 6—remainder—No Federal open season	
Beaver: 1 beaver per day, 1 in possession	May 1–Oct. 31.
Coyote:	
Unit 6(A) and (D)—2 coyotes	Sept. 1–Apr. 30.
Unit 6(B)—No limit	July 1–June 30.
Unit 6(C)—south of the Copper River Highway and east of the Heney Range—No limit	July 1–June 30.
Unit 6(C)—remainder—No limit	July 1–June 30.

Harvest limits	Open season
Fox, Red (including Cross, Black and Silver Phases)	No open season.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx	No open season.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine.	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
TRAPPING	
Beaver: No limit	Dec. 1–Apr. 30.
Coyote:	
Unit 6(A), (B), and (D)—No limit	Nov. 10–Mar. 31.
Unit 6(C)—south of the Copper River Highway and east of the Heney Range—No limit	Nov. 10–Apr. 30.
Unit 6(C)—remainder—No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Jan. 1–Feb. 15.
Marten: No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(7) *Unit 7.* (i) Unit 7 consists of Gulf of Alaska drainages between Gore Point and Cape Fairfield including the Nellie Juan and Kings River drainages, and including the Kenai River drainage upstream from the Russian River, the drainages into the south side of Turnagain Arm west of and including the Portage Creek drainage, and east of 150° W. long., and all Kenai Peninsula drainages east of 150° W. long., from Turnagain Arm to the Kenai River.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in the Kenai Fjords National Park;

(B) You may not hunt in the Portage Glacier Closed Area in Unit 7, which consists of Portage Creek drainages between the Anchorage-Seward Railroad and Placer Creek in Bear Valley, Portage Lake, the mouth of Byron Creek, Glacier Creek, and Byron Glacier; however, you may hunt grouse, ptarmigan, hares, and squirrels with shotguns after September 1.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15; except in the drainages of Resurrection Creek and its tributaries.

(B) [Reserved].

Harvest limits	Open season
HUNTING	
Black Bear: Unit 7—3 bears	July 1–June 30.
Moose:	
Unit 7—that portion draining into Kings Bay—1 bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler may be taken by the community of Chenega Bay and also by the community of Tatitlek. Public lands are closed to the taking of moose except by eligible rural residents.	Aug. 10–Sept. 20.
Unit 7—remainder	No open season.
Beaver: 1 beaver per day, 1 in possession	May 1–Oct. 10.
Coyote: No limit	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Wolf:	
Unit 7—that portion within the Kenai National Wildlife Refuge—2 wolves	Aug. 10–Apr. 30.
Unit 7—Remainder—5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
TRAPPING	
Beaver: 20 beaver per season	Nov. 10–Mar.31.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Jan. 1–Feb. 15.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–May 15.
Otter: No limit	Nov. 10–Feb. 28.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(8) *Unit 8.* Unit 8 consists of all islands southeast of the centerline of Shelikof Strait including Kodiak, Afognak, Whale, Raspberry, Shuyak, Spruce, Marmot, Sitkalidak, Amook, Uganik, and Chirikof Islands, the Trinity Islands, the Semidi Islands, and other adjacent islands.

(i) If you have a trapping license, you may take beaver with a firearm in Unit 8 from Nov. 10–Apr. 30.

(ii) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
HUNTING	
Brown Bear: 1 bear by Federal registration permit only. Up to 1 permit may be issued in Akiok; up to 1 permit may be issued in Karluk; up to 3 permits may be issued in Larsen Bay; up to 2 permits may be issued in Old Harbor; up to 2 permits may be issued in Ouzinkie; and up to 2 permits may be issued in Port Lions.	Dec. 1–Dec. 15. Apr. 1–May 15.
Deer:	
Unit 8—that portion of Kodiak Island north of a line from the head of Settlers Cove to Crescent Lake (57° 52′ N. lat., 152° 58′ W. long.), and east of a line from the outlet of Crescent Lake to Mount Ellison Peak and from Mount Ellison Peak to Pokati Point at Whale Passage, and that portion of Kodiak Island east of a line from the mouth of Saltery Creek to the mouth at Elbow Creek, and adjacent small islands in Chiniak Bay–1 deer; however, antlerless deer may be taken only from Oct. 25–Oct. 31.	Aug. 1–Oct. 31.
Unit 8—that portion of Kodiak Island and adjacent islands south and west of a line from the head of Terror Bay to the head of the south-western most arm of Ugak Bay–5 deer; however, antlerless deer may be taken only from Oct. 1–Jan. 31.	Aug. 1–Jan. 31.
Unit 8—remainder—5 deer; however, antlerless deer may be taken only from Oct. 1–Jan. 31; no more than 1 antlerless deer may be taken from Oct. 1–Nov. 30.	Aug. 1–Jan. 31.
Elk: Afognak Island above mean high tide—1 elk per household by Federal registration permit only; only 1 elk in possession for each two hunters in a party. The season will be closed by announcement of the Refuge Manager, Kodiak National Wildlife Refuge when the combined Federal/State harvest reaches 15% of the herd.	Sept. 1–Nov. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
Beaver: 30 beaver per season	Nov. 10–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Mar. 31.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Jan. 31.

(9) *Unit 9.* (i) Unit 9 consists of the Alaska Peninsula and adjacent islands including drainages east of False Pass, Pacific Ocean drainages west of and excluding the Redoubt Creek drainage; drainages into the south side of Bristol Bay, drainages into the north side of Bristol Bay east of Etolin Point, and including the Sanak and Shumagin Islands:

(A) Unit 9(A) consists of that portion of Unit 9 draining into Shelikof Strait and Cook Inlet between the southern boundary of Unit 16 (Redoubt Creek) and the northern boundary of Katmai National Park and Preserve;

(B) Unit 9(B) consists of the Kvichak River drainage;

(C) Unit 9(C) consists of the Alagnak (Branch) River drainage, the Naknek River drainage, and all land and water within Katmai National Park and Preserve;

(D) Unit 9(D) consists of all Alaska Peninsula drainages west of a line from the southernmost head of Port Moller to the head of American Bay including the Shumagin Islands and other islands of Unit 9 west of the Shumagin Islands;

(E) Unit 9(E) consists of the remainder of Unit 9.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in Katmai National Park;

(B) You may not use motorized vehicles, except aircraft, boats, or snowmobiles used for hunting and transporting a hunter or harvested animal parts from Aug. 1–Nov. 30 in the Naknek Controlled Use Area, which includes all of Unit 9(C) within the Naknek River drainage upstream from and including the King Salmon Creek drainage; however, you may use a motorized vehicle on the Naknek-King Salmon, Lake Camp, and Rapids Camp roads and on the King Salmon Creek trail, and on frozen surfaces of the Naknek River and Big Creek.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm to take beaver in Unit 9(B) from April 1–May 31 and in the remainder of Unit 9 from April 1–April 30;

(B) In Unit 9(B), Lake Clark National Park and Preserve, residents of Nondalton, Iliamna, Newhalen, Pedro Bay, and Port Alsworth, may hunt brown bear by Federal registration permit in lieu of a resident tag; ten permits will be available with at least one permit issued in each community but no more than five permits will be issued in a single community; the season will be closed when four females or ten bears have been taken, whichever occurs first;

(C) Residents of Newhalen, Nondalton, Iliamna, Pedro Bay, and Port Alsworth may take up to a total of 10 bull moose in Unit 9(B) for ceremonial purposes, under the terms of a Federal registration permit from July 1 through June 30. Permits will be issued to individuals only at the request of a local organization. This 10 moose limit is not cumulative with that permitted for potlatches by the State;

(D) For Units 9(C) and (E) only, a Federally-qualified subsistence user (recipient) of Units 9(C) and (E) may designate another Federally-qualified subsistence user of Units 9(C) and (E) to

take bull caribou on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report and turn over all meat to the recipient. There is no restriction on the number of possession limits the designated hunter may have in his/her possession at any one time;

(E) For Unit 9(D), a Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than four harvest limits in his/her possession at any one time.

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 9(B)—Lake Clark National Park and Preserve—Rural residents of Nondalton, Iliamna, Newhalen, Pedro Bay, and Port Alsworth only—1 bear by Federal registration permit only.	July 1–June 30.
Unit 9(B), remainder—1 bear by State registration permit only	Sept 1–May 31.
Unit 9(E)—1 bear by Federal registration permit	Oct. 1–Dec. 31. May 10–May 25.
Caribou:	
Unit 9(A)—4 caribou; however, no more than 2 caribou may be taken Aug. 10–Sept. 30 and no more than 1 caribou may be taken Oct. 1–Nov. 30.	Aug. 10–Mar. 31.
Unit 9(C), that portion within the Alagnak River drainage—1 caribou	Aug. 1–Mar. 31.
Unit 9(C), remainder—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of caribou except by residents of Units 9(C) and (E).	Aug. 10–Sept. 20. Nov. 15–Feb. 28.
Unit 9(B)—5 caribou; however, no more than 2 bulls may be taken from Oct. 1–Nov. 30	Aug 1–Apr. 15.
Unit 9((D)—1 caribou by Federal registration permit	Aug. 1–Sept. 25. Nov. 15–Mar. 31.
Unit 9(E)—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of caribou except by residents of Units 9(C) and (E).	Aug. 10–Sept. 20. Nov. 1–Apr. 30.
Sheep:	
Unit 9(B)—Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth only—I ram with 7/8 curl horn by Federal registration permit only.	Aug. 10–Oct. 10.
Remainder of Unit 9—I ram with 7/8 curl horn	Aug. 10–Sept. 20.
Moose:	
Unit 9(A)—1 bull	Sept. 1–Sept. 15.
Unit 9(B)—1 bull	Aug. 20–Sept. 15.
Unit 9(C)—that portion draining into the Naknek River from the north—1 bull	Sept. 1–Sept. 15. Dec. 1–Dec. 31.
Unit 9(C)—that portion draining into the Naknek River from the south—1 bull. However, during the period Aug. 20–Aug. 31, bull moose may be taken by Federal registration permit only. During the December hunt, antlerless moose may be taken by Federal registration permit only. The antlerless season will be closed when 5 antlerless moose have been taken. Public lands are closed during December for the hunting of moose, except by eligible rural Alaska residents.	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
Unit 9(C)—remainder—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31	Sept. 1–Sept. 15. Dec. 1–Dec. 31.
Unit 9(E)—1 bull	Aug. 20–Sept. 20. Dec. 1–Jan. 20.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White): No limit	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
Beaver:	
Unit 9(B), (C), and (E)—40 beaver per season; however, no more than 20 may be taken between Apr. 1–May 31	Nov. 10–May 31.
Unit 9—remainder—40 beaver per season; however, no more than 20 may be taken between Apr. 1–Apr. 30	Jan 1–Apr. 30.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White): No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28
Lynx: No limit	Nov. 10–Feb. 28.
Marten: No limit	Nov. 10–Feb. 28
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(10) *Unit 10.* (i) Unit 10 consists of the Aleutian Islands, Unimak Island, and the Pribilof Islands.

(ii) You may not take any wildlife species for subsistence uses on Otter Island in the Pribilof Islands.

(iii) In Unit 10—Unimak Island only, a Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than four harvest limits in his/her possession at any one time.

Harvest limits	Open season
HUNTING	
Caribou:	
Unit 10—Unimak Island only—2 caribou by Federal registration permit only	Aug. 1–Sept. 25. Nov. 15–Mar. 31.
Unit 10—remainder—No limit	July 1–June 30.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	July 1–June. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(11) *Unit 11.* Unit 11 consists of that area draining into the headwaters of the Copper River south of Suslota Creek and the area drained by all tributaries into the east bank of the Copper River between the confluence of Suslota Creek with the Slana River and Miles Glacier.

(i) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistance user to take caribou and moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(ii) [Reverved]

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: Unit 11—1 bear	Sept. 1–May 31.
Caribou: Unit 11	No open season.
Sheep:	
1 sheep	Aug. 10–Sept. 20.
1 sheep by Federal registration permit only by persons 60 years of age or older	Sept. 21–Oct. 20.
Goat: Unit 11—that portion within the Wrangell-St. Elias National Park and Preserve—1 goat by Federal registration permit only. Federal public lands will be closed to the harvest of goats when a total of 45 goats have been harvested between Federal and State hunts.	Aug. 25–Dec. 31.
Moose: 1 antlered bull by Federal registration permit only	Aug. 20–Sept. 20.
Beaver: 1 beaver per day, 1 in possession	June 1–Oct. 10.
Coyote: 10 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Dec. 15–Jan. 15.
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Jan. 31.
Wolverine: 1 wolverine	Sept. 1–Jan. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
TRAPPING	
Beaver: 30 beaver per season	Nov. 10–Apr. 30.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Nov. 10–Feb. 28.

Harvest limits	Open season
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Jan. 31.

(12) *Unit 12.* Unit 12 consists of the Tanana River drainage upstream from the Robertson River, including all drainages into the east bank of the Robertson River, and the White River drainage in Alaska, but excluding the Ladue River drainage.

(i) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) You may not use a steel trap, or a snare using cable smaller than 3/32 inch diameter to trap wolves in Unit 12 during April and October;

(C) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou and moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(ii) [Reserved]

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: 1 bear	Aug. 10–June 30.
Caribou:	
Unit 12—that portion of the Nabesna River drainage within the Wrangell-St. Elias National Park and Preserve and all Federal lands south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—The taking of caribou is prohibited on Federal public lands.	No open season.
Unit 12—remainder—1 bull	Sept. 1–Sept. 20.
Unit 12—remainder—1 caribou may be taken by a Federal registration permit during a winter season to be announced. Dates for a winter season to occur between Oct. 1 and Apr. 30 and sex of animal to be taken will be announced by Tetlin National Wildlife Refuge Manager in consultation with Wrangell-St. Elias National Park and Preserve Superintendent, Alaska Department of Fish and Game area biologists, and Chairs of the Eastern Interior Regional Advisory Council and Upper Tanana/Fortymile Fish and Game Advisory Committee.	Winter season to be announced.
Sheep: 1 ram with full curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 12—that portion within the Tetlin National Wildlife Refuge and those lands within the Wrangell-St. Elias National Preserve north and east of a line formed by the Pickerel Lake Winter Trail from the Canadian border to the southern boundary of the Tetlin National Wildlife Refuge—1 antlered bull; however during the Aug. 15–Aug. 28 season only bulls with spike/fork antlers may be taken. The November season is open by Federal registration permit only.	Aug. 15–Aug. 28. Sept. 1–Sept. 15. Nov. 20–Nov. 30.
Unit 12—that portion lying east of the Nabesna River and Nabesna Glacier and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—1 antlered bull; however during the Aug. 15–Aug. 28 season only bulls with spike/fork antlers may be taken.	Aug. 15–Aug. 28. Sept. 1–Sept. 30.
Unit 12—remainder—1 antlered bull; however during the Aug. 15–Aug. 28 season only bulls with spike/fork antlers may be taken.	Aug. 15–Aug. 28. Sept. 19–Sept. 15.
Coyote: 10 coyotes; however, no more than 2 coyotes may be taken before October 1	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct.1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Mar. 15.
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
Beaver: 15 beaver per season	Nov. 1–Apr. 15.
Coyote: No limit	Oct. 15–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Sept. 20–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Oct. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Feb. 28.

(13) *Unit 13.* (i) Unit 13 consists of that area westerly of the east bank of the Copper River and drained by all tributaries into the west bank of the Copper River from Miles Glacier and including the Slana River drainages north of Suslota Creek; the drainages into the Delta River upstream from Falls Creek and Black Rapids Glacier; the drainages into the Nenana River upstream from the southeast corner of Denali National Park at Windy; the

drainage into the Susitna River upstream from its junction with the Chulitna River; the drainage into the east bank of the Chulitna River upstream to its confluence with Tokositna River; the drainages of the Chulitna River (south of Denali National Park) upstream from its confluence with the Tokositna River; the drainages into the north bank of the Tokositna River upstream to the base of the Tokositna Glacier; the drainages into the Tokositna Glacier; the drainages into the east bank of the Susitna River between its confluences with the Talkeetna and Chulitna Rivers; the drainages into the north bank of the Talkeetna River; the drainages into the east bank of the Chickaloon River; the drainages of the Matanuska River above its confluence with the Chickaloon River:

(A) Unit 13(A) consists of that portion of Unit 13 bounded by a line beginning at the Chickaloon River bridge at Mile 77.7 on the Glenn Highway, then along the Glenn Highway to its junction with the Richardson Highway, then south along the Richardson Highway to the foot of Simpson Hill at Mile 111.5, then east to the east bank of the Copper River, then northerly along the east bank of the Copper River to its junction with the Gulkana River, then northerly along the west bank of the Gulkana River to its junction with the West Fork of the Gulkana River, then westerly along the west bank of the West Fork of the Gulkana River to its source, an unnamed lake, then across the divide into the Tyone River drainage, down an unnamed stream into the Tyone River, then down the Tyone River to the Susitna River, then down the southern bank of the Susitna River to the mouth of Kosina Creek, then up Kosina Creek to its headwaters, then across the divide and down Aspen Creek to the Talkeetna River, then southerly along the boundary of Unit 13 to the Chickaloon River bridge, the point of beginning;

(B) Unit 13(B) consists of that portion of Unit 13 bounded by a line beginning at the confluence of the Copper River and the Gulkana River, then up the east bank of the Copper River to the Gakona River, then up the Gakona River and Gakona Glacier to the boundary of Unit 13, then westerly along the boundary of Unit 13 to the Susitna Glacier, then southerly along the west bank of the Susitna Glacier and the Susitna River to the Tyone River, then up the Tyone River and across the divide to the headwaters of the West Fork of the Gulkana River, then down the West Fork of the Gulkana River to the confluence of the Gulkana River and the Copper River, the point of beginning;

(C) Unit 13(C) consists of that portion of Unit 13 east of the Gakona River and Gakona Glacier;

(D) Unit 13(D) consists of that portion of Unit 13 south of Unit 13(A);

(E) Unit 13(E) consists of the remainder of Unit 13.

(ii) Within the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (k)(13) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) You may not use motorized vehicles or pack animals for hunting from Aug. 5–Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Cantwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) Except for access and transportation of harvested wildlife on Sourdough and Haggard Creeks, Meiers Lake trails, or other trails designated by the Board, you may not use motorized vehicles for subsistence hunting, is prohibited in the Sourdough Controlled Use Area. The Sourdough Controlled Use Area consists of that portion of Unit 13(B) bounded by a line beginning at the confluence of Sourdough Creek and the Gulkana River, then northerly along Sourdough Creek to the Richardson Highway at approximately Mile 148, then northerly along the Richardson Highway to the Meiers Creek Trail at approximately Mile 170, then westerly along the trail to the Gulkana River, then southerly along the east bank of the Gulkana River to its confluence with Sourdough Creek, the point of beginning.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou and moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: 1 bear. Bears taken within Denali National Park must be sealed within 5 days of harvest. That portion within Denali National Park will be closed by announcement of the Superintendent after 4 bears have been harvested.	Aug. 10–May 31.
Caribou: 2 caribou by Federal registration permit only. Hunting within the Trans-Alaska Oil Pipeline right-of-way is prohibited. The right-of-way is identified as the area occupied by the pipeline (buried or above ground) and the cleared area 25 feet on either side of the pipeline.	Aug. 10–Sept. 30. Oct. 21–Mar. 31.
Sheep: Unit 13—excluding Unit 13(D) and the Tok Management Area and Delta Controlled Use Area—1 ram with 7/8 curl horn.	Aug. 10–Sept. 20.
Moose:	
Unit 13(E)—1 antlered bull moose by Federal registration permit only; only 1 permit will be issued per household	Aug. 1–Sept. 20.
Unit 13—remainder—1 antlered bull moose by Federal registration permit only	Aug. 1–Sept. 20.
Beaver: 1 beaver per day, 1 in possession	June 15–Sept. 10.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Dec. 15–Jan. 15.

Harvest limits	Open season
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Jan. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
TRAPPING	
Beaver: No limit	Oct. 10–May 15.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Dec. 1–Feb. 15.
Marten:	
Unit 13(A–D)—No limit	Nov. 10–Feb. 28.
Unit 13—remainder—No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Oct. 15–Apr. 30.
Wolverine: No limit	Nov. 10–Jan. 31.

(14) *Unit 14.* (i) Unit 14 consists of drainages into the north side of Turnagain Arm west of and excluding the Portage Creek drainage, drainages into Knik Arm excluding drainages of the Chickaloon and Matanuska Rivers in Unit 13, drainages into the north side of Cook Inlet east of the Susitna River, drainages into the east bank of the Susitna River downstream from the Talkeetna River, and drainages into the south bank of the Talkeetna River:

(A) Unit 14(A) consists of drainages in Unit 14 bounded on the west by the Susitna River, on the north by Willow Creek, Peters Creek, and by a line from the head of Peters Creek to the head of the Chickaloon River, on the east by the eastern boundary of Unit 14, and on the south by Cook Inlet, Knik Arm, the south bank of the Knik River from its mouth to its junction with Knik Glacier, across the face of Knik Glacier and along the north side of Knik Glacier to the Unit 6 boundary;

(B) Unit 14(B) consists of that portion of Unit 14 north of Unit 14(A);

(C) Unit 14(C) consists of that portion of Unit 14 south of Unit 14(A).

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in the Fort Richardson and Elmendorf Air Force Base Management Areas, consisting of the Fort Richardson and Elmendorf Military Reservation;

(B) You may not take wildlife for subsistence uses in the Anchorage Management Area, consisting of all drainages south of Elmendorf and Fort Richardson military reservations and north of and including Rainbow Creek.

(iii) Unit-specific regulations:

Harvest limits	Open season
HUNTING	
Black Bear: Unit 14(C)—1 bear	July 1–June 30.
Beaver: Unit 14(C)—1 beaver per day, 1 in possession	May 15–Oct. 31.
Coyote: Unit 14(C)—2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): Unit 14(C)—2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): Unit 14(C)—5 hares per day	Sept. 8–Apr. 30.
Lynx: Unit 14(C)—2 lynx	Dec. 15–Jan. 15.
Wolf: Unit 14(C)—5 wolves	Aug. 10–Apr. 30.
Wolverine: Unit 14(C)—1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): Unit 14(C)—5 per day, 10 in possession	Sept. 8–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): Unit 14(C)—10 per day, 20 in possession	Sept. 8–Mar. 31.
TRAPPING	
Beaver: Unit 14(C)—that portion within the drainages of Glacier Creek, Kern Creek, Peterson Creek, the Twentymile River and the drainages of Knik River outside Chugach State Park—20 beaver per season.	Dec. 1–Apr. 15.
Coyote: Unit 14(C)—No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): Unit 14(C)—1 fox	Nov. 10–Feb. 28.
Lynx: Unit 14(C)—No limit	Dec. 15–Jan. 15.
Marten: Unit 14(C)—No limit	Nov. 10–Jan. 31.
Mink and Weasel: Unit 14(C)—No limit	Nov. 10–Jan. 31.
Muskrat: Unit 14(C)—No limit	Nov. 10–May 15.
Otter: Unit 14(C)—No limit	Nov. 10–Feb. 28.
Wolf: Unit 14(C)—No limit	Nov. 10–Feb. 28.
Wolverine: Unit 14(C)—No limit	Nov. 10–Feb. 28.

(15) *Unit 15.* (i) Unit 15 consists of that portion of the Kenai Peninsula and adjacent islands draining into the Gulf of Alaska, Cook Inlet, and Turnagain Arm from Gore Point to the point where longitude line 150°00′W. crosses the coastline of Chickaloon Bay in Turnagain Arm, including that area lying west of longitude line 150°00′W. to the mouth of the Russian River, then southerly along the Chugach National Forest boundary to the upper end of Upper Russian Lake; and including the drainages into Upper Russian Lake west

of the Chugach National Forest boundary:

(A) Unit 15(A) consists of that portion of Unit 15 north of the Kenai River and Skilak Lake;

(B) Unit 15(B) consists of that portion of Unit 15 south of the Kenai River and Skilak Lake, and north of the Kasilof River, Tustumena Lake, Glacier Creek, and Tustumena Glacier;

(C) Unit 15(C) consists of the remainder of Unit 15.

(ii) You may not take wildlife, except for grouse, ptarmigan, and hares that may be taken only from October 1–March 1 by bow and arrow only, in the Skilak Loop Management Area, which consists of that portion of Unit 15(A) bounded by a line beginning at the eastern most junction of the Sterling Highway and the Skilak Loop (milepost 76.3), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Lake Campground, then northerly along the Lower Skilak Lake Campground Road and the Skilak Loop Road to its western most junction with the Sterling Highway, then easterly along the Sterling Highway to the point of beginning.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not trap furbearers for subsistence in the Skilak Loop Wildlife Management Area;

(C) You may not trap marten in that portion of Unit 15(B) east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier;

(D) You may not take red fox in Unit 15 by any means other than a steel trap or snare;

(E) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
HUNTING	
Black Bear:	
Unit 15(C)—3 bears	July 1–June 30.
Unit 15—remainder	No open season.
Moose:	
Unit 15(A)—excluding the Skilak Loop Wildlife Management Area.—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only.	Aug. 18–Sept. 20.
Unit 15(A)—Skilak Loop Wildlife Management Area	No open season.
Unit 15(B) and (C)—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only.	Aug. 10–Sept. 20.
Coyote: No limit	Sept. 1–Apr. 30
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Wolf:	
Unit 15—that portion within the Kenai National Wildlife Refuge—2 Wolves	Aug. 10–Apr. 30.
Unit 15—remainder—5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 Wolverine	Sept. 1–Mar. 31.
Grouse (Spruce): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Grouse (Ruffed)	No open season.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 15(A) and (B)—20 per day, 40 in possession	Aug. 10–Mar. 31.
Unit 15(C)—20 per day, 40 in possession	Aug. 10–Dec. 31.
Unit 15(C)—5 per day, 10 in possession	Jan. 1–Mar. 31.
TRAPPING	
Beaver: 20 Beaver per season	Nov. 10–Mar. 31.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): 1 Fox	Nov. 10–Feb. 28.
Lynx: No limit	Jan. 1–Feb. 15.
Marten:	
Unit 15(B)—that portion east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier	No open season.
Remainder of Unit 15—No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–May 15.
Otter: Unit 15—No limit	Nov. 10–Feb. 28.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: Unit 15(B) and (C)—No limit	Nov. 10–Feb. 28.

(16) *Unit 16.* (i) Unit 16 consists of the drainages into Cook Inlet between Redoubt Creek and the Susitna River, including Redoubt Creek drainage, Kalgin Island, and the drainages on the west side of the Susitna River (including the Susitna River) upstream to its confluence with the Chulitna River; the drainages into the west side of the Chulitna River (including the Chulitna River) upstream to the Tokositna River, and drainages into the south side of the Tokositna River upstream to the base of the Tokositna Glacier, including the drainage of the Kahiltna Glacier:

(A) Unit 16(A) consists of that portion of Unit 16 east of the east bank of the Yentna River from its mouth upstream to the Kahiltna River, east of the east bank of the Kahiltna River, and east of the Kahiltna Glacier;

(B) Unit 16(B) consists of the remainder of Unit 16.

(ii) You may not take wildlife for subsistence uses in the Mount McKinley National Park, as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (k)(16) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15.

(B) [Reserved]

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Caribou: 1 caribou	Aug. 10–Oct. 31.
Moose:	
Unit 16(B)—Redoubt Bay Drainages south and west of, and including the Kustatan River drainage—1 antlered bull.	Sept. 1–Sept. 15.
Unit 16(B)—remainder—1 moose; however, antlerless moose may be taken only from Sept. 25–Sept. 30 and from Dec. 1–Feb. 28 by Federal registration permit only.	Sept. 1–Sept. 30. Dec. 1–Feb. 28.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Dec. 15–Jan. 15.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
TRAPPING	
Beaver: No limit	Oct. 10–May 15.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Dec. 15–Jan. 15.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(17) *Unit 17*. (i) Unit 17 consists of drainages into Bristol Bay and the Bering Sea between Etolin Point and Cape Newenham, and all islands between these points including Hagemeister Island and the Walrus Islands:

(A) Unit 17(A) consists of the drainages between Cape Newenham and Cape Constantine, and Hagemeister Island and the Walrus Islands;

(B) Unit 17(B) consists of the Nushagak River drainage upstream from, and including the Mulchatna River drainage, and the Wood River drainage upstream from the outlet of Lake Beverley;

(C) Unit 17(C) consists of the remainder of Unit 17.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Except for aircraft and boats and in legal hunting camps, you may not use any motorized vehicle for hunting ungulates, bears, wolves, and wolverine, including transportation of hunters and parts of ungulates, bear, wolves, or wolverine in the Upper Mulchatna Controlled Use Area consisting of Unit 17(B), from Aug. 1–Nov. 1;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag in the Western Alaska Brown Bear Management Area which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, if you have obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15.

(B) [Reserved]

Harvest limits	Open season
HUNTING	
Black Bear: 2 bears.	Aug. 1–May 31.
Brown Bear: Unit 17—1 bear by State registration permit only	Sept. 1–May 31.
Caribou:	
Unit 17(A) and (C)—that portion of 17(A) and (C) consisting of the Nushagak Peninsula south of the Igushik River, Tuklung River and Tuklung Hills, west to Tvativak Bay—2 caribou by Federal registration permit. Public lands are closed to the taking of caribou except by the residents of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clark's Point, and Ekuk during seasons identified above.	Aug. 1–Sept. 30. Dec. 1–Mar. 31.
Unit 17(B) and (C)—that portion of 17(C) east of the Wood River and Wood River Lakes—5 caribou; however, no more than 2 bulls may be taken from Oct. 1–Nov. 30.	Aug. 1–Apr. 15.
Unit 17(A)—remainder and 17(C)—remainder—selected drainages; a harvest limit of up to 5 caribou will be determined at the time the season is announced.	Season to occur between Aug. 1–Mar. 31, harvest limit, and hunt area to be announced by the Togiak National Wildlife Refuge Manager.
Sheep: 1 ram with full curl horn or larger.	Aug. 10–Sept. 20.
Moose:	

Harvest limits	Open season
Unit 17(A)	No open season.
Unit 17(B)—that portion that includes all the Mulchatna River drainage upstream from and including the Chilchitna River drainage—1 bull by State registration permit only during the period Aug. 20–Aug. 31. During the period Sept. 1–Sept. 15 only a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	
Unit 17(C)—that portion that includes the Iowithla drainage and Sunshine Valley and all lands west of Wood River and south of Aleknagik Lake—1 bull by State registration permit only during the period Aug. 20–Aug. 31. During the period Sept. 1–Sept. 15 only a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15.
Unit 17(B)—remainder and 17(C)—remainder—1 bull by State registration permit only during the periods Aug. 20–Aug. 31 and Dec. 1–Dec. 31. During the period Sept. 1–Sept. 15 only a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
Beaver: Unit 17–40 beaver per season	Nov. 10–Mar. 31.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase): No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Mar. 31.
Lynx: No limit	Nov. 10–Mar. 31.
Marten: No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: 2 muskrats	Nov. 10–Feb. 28.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(18) *Unit 18.* (i) Unit 18 consists of that area draining into the Yukon and Kuskokwim Rivers downstream from a straight line drawn between Lower Kalskag and Paimiut and the drainages flowing into the Bering Sea from Cape Newenham on the south to and including the Pastolik River drainage on the north; Nunivak, St. Matthew, and adjacent islands between Cape Newenham and the Pastolik River.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) In the Kalskag Controlled Use Area which consists of that portion of Unit 18 bounded by a line from Lower Kalskag on the Kuskokwim River, northwesterly to Russian Mission on the Yukon River, then east along the north bank of the Yukon River to the old site of Paimiut, then back to Lower Kalskag, you may not use aircraft for hunting any ungulate, bear, wolf, or wolverine, including the transportation of any hunter and ungulate, bear, wolf, or wolverine part; however, this does not apply to transportation of a hunter or ungulate, bear, wolf, or wolverine part by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the Area and points outside the Area;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag in the Western Alaska Brown Bear Management Area which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, if you have obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm to take beaver in Unit 18 from Apr.–Jun. 10;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou south of the Yukon River on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time;

(C) You may take caribou from a boat moving under power in Unit 18.

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: 1 bear by State registration permit only	Sept. 1–May 31.
Caribou:	
Unit 18—that portion south of the Yukon River—A harvest limit of up to 5 caribou will be determined at the time the season is announced and will be based on the management objectives in the ''Qavilnguut (Kilbuck) Caribou Herd Cooperative Management Plan'' The season will be closed when the total harvest reaches guidelines as described in the approved ''Qavilnguut (Kilbuck) Caribou Herd Cooperative Management Plan''.	Season to occur between Aug. 25 and Mar. 31 to be announced by the Yukon Delta National Wildlife Refuge Manager.

Harvest limits	Open season
Unit 18—that portion north of the Yukon River—5 caribou per day	Aug. 1–Mar. 31.
Moose:	
Unit 18—that portion north and west of a line from Cape Romanzof to Kuzilvak Mountain, and then to Mountain Village, and west of, but not including, the Andreafsky River drainage—1 antlered bull.	Sept. 5–Sept. 25.
Unit 18—south of and including the Kanektok River drainages	No open season.
Unit 18—Kuskokwim River drainage—1 antlered bull. A 10-day hunt to occur between Dec. 1 and Feb. 28 (1 bull, evidence of sex required) will be opened by announcement.	Aug. 25–Sept. 25. Winter season to be announced.
Unit 18—remainder—1 antlered bull. A 10-day hunt to occur between Dec. 1 and Feb. 28 (1 bull, evidence of sex required) will be opened by announcement.	Sept. 1—Sept. 30. Winter season to be announced.
Public lands in Unit 18 are closed to the hunting of moose, except by Federally-qualified rural Alaska residents during seasons identified above.	
Beaver: No limit	July 1–June 30.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Mar. 31.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–May 30.
TRAPPING	
Beaver: No limit	July 1–June 30.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase): No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Mar. 31.
Lynx: No limit	Nov. 10–Mar. 31.
Marten: No limit	Nov. 10–Mar. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Mar. 31.

(19) *Unit 19.* (i) Unit 19 consists of the Kuskokwim River drainage upstream from a straight line drawn between Lower Kalskag and Piamiut:

(A) Unit 19(A) consists of the Kuskokwim River drainage downstream from and including the Moose Creek drainage on the north bank and downstream from and including the Stony River drainage on the south bank, excluding Unit 19(B);

(B) Unit 19(B) consists of the Aniak River drainage upstream from and including the Salmon River drainage, the Holitna River drainage upstream from and including the Bakbuk Creek drainage, that area south of a line from the mouth of Bakbuk Creek to the radar dome at Sparrevohn Air Force Base, including the Hoholitna River drainage upstream from that line, and the Stony River drainage upstream from and including the Can Creek drainage;

(C) Unit 19(C) consists of that portion of Unit 19 south and east of a line from Benchmark M#1.26 (approximately 1.26 miles south of the northwest corner of the original Mt. McKinley National Park boundary) to the peak of Lone Mountain, then due west to Big River, including the Big River drainage upstream from that line, and including the Swift River drainage upstream from and including the North Fork drainage;

(D) Unit 19(D) consists of the remainder of Unit 19.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (k)(19) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) In the Upper Kuskokwim Controlled Use Area, which consists of that portion of Unit 19(D) upstream from the mouth of Big River including the drainages of the Big River, Middle Fork, South Fork, East Fork, and Tonzona River, and bounded by a line following the west bank of the Swift Fork (McKinley Fork) of the Kuskokwim River to 152° 50′ W. long., then north to the boundary of Denali National Preserve, then following the western boundary of Denali National Preserve north to its intersection with the Minchumina-Telida winter trail, then west to the crest of Telida Mountain, then north along the crest of Munsatli Ridge to elevation 1,610, then northwest to Dyckman Mountain and following the crest of the divide between the Kuskokwim River and the Nowitna drainage, and the divide between the Kuskokwim River and the Nixon Fork River to Loaf benchmark on Halfway Mountain, then south to the west side of Big River drainage, the point of beginning, you may not use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the Controlled Use Area, or between a publicly owned airport within the area and points outside the area;

(C) You may hunt brown bear by State registration permit in lieu of a resident tag in the Western Alaska Brown Bear Management Area, which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage,

if you have obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30.

(B) [Reserved]

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 19(A) and (B)—those portions which are downstream of and including the Aniak River drainage—1 bear by State registration permit.	Sept. 1–May 31.
Unit 19(A)—remainder, 19(B)—remainder, and Unit 19(D)—1 bear every four regulatory years	Sept. 10–May 25.
Caribou:	
Unit 19(A)—north of Kuskokwim River—1 caribou	Aug. 10–Sept. 30. Nov. 1–Feb. 28.
Unit 19(A)—south of the Kuskokwim River and Unit 19(B) (excluding rural Alaska residents of Lime Village)—5 caribou.	Aug. 1–Apr. 15.
Unit 19(C)—1 caribou	Aug. 10–Oct. 10.
Unit 19(D)—south and east of the Kuskokwim River and North Fork of the Kuskokwim River—1 caribou	Aug. 10–Sept. 30. Nov. 1–Jan. 31.
Unit 19(D)—remainder—1 caribou	Aug. 10–Sept. 30.
Unit 19—rural Alaska residents domiciled in Lime Village only—no individual harvest limit but a village harvest quota of 200 caribou; cows and calves may not be taken from Apr. 1–Aug. 9. Reporting will be by a community reporting system.	July 1–June 30.
Sheep: 1 ram with ⅞ curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 19—Rural Alaska residents of Lime Village only—no individual harvest limit, but a village harvest quota of 40 moose (including those taken under the State Tier II system); either sex. Reporting will be by a community reporting system.	July 1–June 30.
Unit 19(A)—that portion north of the Kuskokwim River upstream from, but not including the Kolmakof River drainage and south of the Kuskokwim River upstream from, but not including the Holokuk River drainage—1 moose; however, antlerless moose may be taken only during the Feb. 1–Feb. 10 season.	Sept. 1–Sept. 20. Nov. 20–Nov. 30. Jan. 1–Jan. 10. Feb. 1–Feb. 10.
Unit 19(A)—remainder—1 bull	Sept. 1–Sept. 20. Nov. 20–Nov. 30. Jan. 1–Jan. 10. Feb. 1–Feb. 10.
Unit 19(B)—1 antlered bull	Sept. 1–Sept. 30.
Unit 19(C)—1 antlered bull	Sept. 1–Oct. 10.
Unit 19(C)—1 bull by State registration permit	Jan. 15–Feb. 15.
Unit 19(D)—that portion of the Upper Kuskokwim Controlled Use Area within the North Fork drainage upstream from the confluence of the South Fork to the mouth of the Swift Fork—1 antlered bull.	Sept. 1–Sept. 30.
Unit 19(D)—remainder of the Upper Kuskokwim Controlled Use Area—1 bull	Sept. 1–Sept. 30. Dec. 1–Feb. 28.
Unit 19(D)—remainder—1 antlered bull	Sept. 1–Sept. 30. Dec. 1–Dec. 15.
Coyote: 10 coyotes; however, no more than 2 coyotes may be taken before October 1	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
Beaver: No limit	Nov. 1–Jun. 10.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Mar. 31.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Mar. 31.

(20) *Unit 20.* (i) Unit 20 consists of the Yukon River drainage upstream from and including the Tozitna River drainage to and including the Hamlin Creek drainage, drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, the Ladue River and Fortymile River drainages, and the Tanana River drainage north of Unit 13 and downstream from the east bank of the Robertson River:

(A) Unit 20(A) consists of that portion of Unit 20 bounded on the south by the Unit 13 boundary, bounded on the east

by the west bank of the Delta River, bounded on the north by the north bank of the Tanana River from its confluence with the Delta River downstream to its confluence with the Nenana River, and bounded on the west by the east bank of the Nenana River;

(B) Unit 20(B) consists of drainages into the north bank of the Tanana River from and including Hot Springs Slough upstream to and including the Banner Creek drainage;

(C) Unit 20(C) consists of that portion of Unit 20 bounded on the east by the east bank of the Nenana River and on the north by the north bank of the Tanana River downstream from the Nenana River;

(D) Unit 20(D) consists of that portion of Unit 20 bounded on the east by the east bank of the Robertson River and on the west by the west bank of the Delta River, and drainages into the north bank of the Tanana River from its confluence with the Robertson River downstream to, but excluding the Banner Creek drainage;

(E) Unit 20(E) consists of drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, and the Ladue River drainage;

(F) Unit 20(F) consists of the remainder of Unit 20.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (k)(20) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) You may not use motorized vehicles or pack animals for hunting from Aug. 5—Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Canwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) You may not use motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as provided below in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway. The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. Only the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor;

(D) You may not use any motorized vehicle for hunting from August 5—September 20 in the Glacier Mountain Controlled Use Area, which consists of that portion of Unit 20(E) bounded by a line beginning at Mile 140 of the Taylor Highway, then north along the highway to Eagle, then west along the cat trail from Eagle to Crooked Creek, then from Crooked Creek southwest along the west bank of Mogul Creek to its headwaters on North Peak, then west across North Peak to the headwaters of Independence Creek, then southwest along the west bank of Independence Creek to its confluence with the North Fork of the Fortymile River, then easterly along the south bank of the North Fork of the Fortymile River to its confluence with Champion Creek, then across the North Fork of the Fortymile River to the south bank of Champion Creek and easterly along the south bank of Champion Creek to its confluence with Little Champion Creek, then northeast along the east bank of Little Champion Creek to its headwaters, then northeasterly in a direct line to Mile 140 on the Taylor Highway; however, this does not prohibit motorized access via, or transportation of harvested wildlife on, the Taylor Highway or any airport;

(E) You may by permit only hunt moose on the Minto Flats Management Area, which consists of that portion of Unit 20 bounded by the Elliot Highway beginning at Mile 118, then northeasterly to Mile 96, then east to the Tolovana Hotsprings Dome, then east to the Winter Cat Trail, then along the Cat Trail south to the Old Telegraph Trail at Dunbar, then westerly along the trail to a point where it joins the Tanana River three miles above Old Minto, then along the north bank of the Tanana River (including all channels and sloughs except Swan Neck Slough), to the confluence of the Tanana and Tolovana Rivers and then northerly to the point of beginning;

(F) You may hunt moose by bow and arrow only in the Fairbanks Management Area, which consists of the Goldstream subdivision (SE 1/4 SE 1/4, Section 28 and Section 33, Township 2 North, Range 1 West, Fairbanks Meridian) and that portion of Unit 20(B) bounded by a line from the confluence of Rosie Creek and the Tanana River, northerly along Rosie Creek to the divide between Rosie Creek and Cripple Creek, then down Cripple Creek to its confluence with Ester Creek, then up Ester Creek to its confluence with Ready Bullion Creek, then up Ready Bullion Creek to the summit of Ester Dome, then down Sheep Creek to its confluence with Goldstream Creek, then easterly along Goldstream Creek to its confluence with First Chance Creek, then up First Chance Creek to Tungsten Hill, then southerly along Steele Creek to its intersection with the Trans-Alaska Pipeline, then southerly along the pipeline right-of-way to the Chena River, then along the north bank of the Chena River to the Moose Creek dike, then southerly along Moose Creek dike to its intersection with the Tanana River, and then westerly along the north bank of the Tanana River to the point of beginning.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) You may not use a steel trap, or a snare using cable smaller than 3/32 inch diameter to trap wolves in Unit 20(E) during April and October;

(C) Residents of Unit 20 and 21 may take up to three moose per regulatory year for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 20(E)—1 bear	Aug. 10–June 30.
Unit 20—remainder—1 bear every four regulatory years	Sept. 1–May 31.
Caribou:	
Unit 20(E)—1 bull by joint State/Federal registration permit only. The fall season will close when a combined State/Federal harvest of 55 bulls has been reached. The winter season will close when the combined fall and winter State/Federal harvest quota of 150 bulls for the Fortymile herd has been reached. The season closures will be announced by the Northern Field Office Manager, Bureau of Land Management after consultation with the National Park Service and Alaska Department of Fish and Game.	Aug. 10–Sept. 30. Nov. 15–Feb. 28.
Unit 20(F)—Tozitna River drainage—1 caribou; however, only bull caribou may be taken Aug. 10–Sept. 30	Aug. 10–Sept. 30. Nov. 26–Dec. 10. Mar. 1–Mar. 15.
Unit 20(F)—south of the Yukon River—1 caribou	Dec. 1–Dec. 31.
Remainder of Unit 20(F)—1 bull	Aug. 10–Sept. 30.
Moose:	
Unit 20(A)—1 antlered bull	Sept. 1–Sept. 20.
Unit 20(B)—that portion within the Minto Flats Management Area—1 bull by Federal registration permit only	Sept. 1–Sept. 20. Jan. 10–Feb. 28.
Unit 20(B)—remainder—1 antlered bull	Sept. 1–Sept. 20.
Unit 20(C)—that portion within Denali National Park and Preserve west of the Toklat River, excluding lands within Mount McKinley National Park as it existed prior to December 2, 1980—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1–Sept. 30. Nov. 15–Dec. 15.
Unit 20(C)—remainder—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1–Sept. 30.
Unit 20(E)—that portion within Yukon Charley National Preserve—1 bull	Aug. 20–Sept. 30.
Unit 20(E)—that portion drained by the Forty-mile River (all forks) from Mile 9½ to Mile 145 Taylor Highway, including the Boundary Cutoff Road—1 antlered bull; however during the period Aug. 20–Aug. 28 only a bull with Spike/fork antlers may be taken.	Aug. 20–Aug. 28. Sept. 1–Sept. 15.
Unit 20(F)—that portion within the Dalton Highway Corridor Management Area—1 antlered bull by Federal registration permit only.	Sept. 1–Sept. 25.
Unit 20(F)—remainder—1 antlered bull	Sept. 1–Sept. 25.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx:	
Unit 20(E)—2 lynx	Nov. 1–Jan. 31.
Unit 20—remainder—2 lynx	Dec. 1–Jan. 31.
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 20(D)—that portion south of the Tanana River and west of the Johnson River—15 per day, 30 in possession, provided that not more than 5 per day and 10 in possession are sharp-tailed grouse.	Aug. 25–Mar. 31.
Unit 20—remainder—15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 20—those portions within five miles of Alaska Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary) and that portion of Alaska Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession.	Aug. 10–Mar. 31.
Unit 20—remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
Beaver:	
Units 20(A), 20(B), Unit 20(C), and 20(F)—No limit	Nov. 1–Apr. 15.
Units 20(D) and (E)—25 beaver	Nov. 1–Apr. 15.
Coyote:	
Unit 20(E)—No limit	Oct. 15–Apr. 30.
Remainder Unit 20—No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx:	
Unit 20(A), (B), (D), (E), and (C) east of the Teklanika River—No limit	Dec. 1–Feb. 15.
Unit 20(F) and the remainder of 20(C)—No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat:	
Unit 20(E)—No limit	Sept. 20–June 10.
Unit 20—remainder—No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf:	
Unit 20(A, B, C, & F)—No limit	Nov. 1–Apr. 30.
Unit 20(D)—No limit	Oct. 15–Apr. 30.
Unit 20(E)—No limit	Oct. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Feb. 28.

(21) *Unit 21.* (i) Unit 21 consists of drainages into the Yukon River upstream from Paimiut to, but not including the Tozitna River drainage on the north bank, and to, but not including the Tanana River drainage on the south bank; and excluding the Koyukuk River drainage upstream from the Dulbi River drainage:

(A) Unit 21(A) consists of the Innoko River drainage upstream from and including the Iditarod River drainage, and the Nowitna River drainage upstream from the Little Mud River;

(B) Unit 21(B) consists of the Yukon River drainage upstream from Ruby and east of the Ruby-Poorman Road, downstream from and excluding the Tozitna River and Tanana River drainages, and excluding the Nowitna River drainage upstream from the Little Mud River, and excluding the Melozitna River drainage upstream from Grayling Creek;

(C) Unit 21(C) consists of the Melozitna River drainage upstream from Grayling Creek, and the Dulbi River drainage upstream from and including the Cottonwood Creek drainage;

(D) Unit 21(D) consists of the Yukon River drainage from and including the Blackburn Creek drainage upstream to Ruby, including the area west of the Ruby-Poorman Road, excluding the Koyukuk River drainage upstream from the Dulbi River drainage, and excluding the Dulbi River drainage upstream from Cottonwood Creek;

(E) Unit 21(E) consists of the Yukon River drainage from Paimiut upstream to, but not including the Blackburn Creek drainage, and the Innoko River drainage downstream from the Iditarod River drainage.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65°57′ N. lat., 156°41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(B) The Paradise Controlled Use Area, which consists of that portion of Unit 21 bounded by a line beginning at the old village of Paimiut, then north along the west bank of the Yukon River to Paradise, then northwest to the mouth of Stanstrom Creek on the Bonasila River, then northeast to the mouth of the Anvik River, then along the west bank of the Yukon River to the lower end of Eagle Island (approximately 45 miles north of Grayling), then to the mouth of the Iditarod River, then down the east bank of the Innoko River to its confluence with Paimiut Slough, then south along the east bank of Paimiut Slough to its mouth, and then to the old village of Paimiut, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or part of moose; however, this does not apply to transportation of a moose hunter or part of moose by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the area and points outside the area.

(iii) You may hunt brown bear by State registration permit in lieu of a resident tag in the Northwest Alaska Brown Bear Management Area, which consists of Unit 21(D), Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A), if you have obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears, or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iv) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) If you have a trapping license, you may use a firearm to take beaver in Unit 21(E) from Apr. 1–June 1;

(C) The residents of Unit 20 and 21 may take up to three moose per regulatory year for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State;

(D) The residents of Unit 21 may take up to three moose per regulatory year for the celebration known as the Kaltag/Nulato Stickdance, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Kaltag or Nulato. This three moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 21(D)—1 bear by State registration permit only	Sept. 1–June 15.
Unit 21—remainder—1 bear every four regulatory years	Sept. 1–May 31.
Caribou:	
Unit 21(A)—1 caribou	Aug. 10–Sept. 30. Dec. 10–Dec. 20.
Unit 21(B), (C), and (E)—1 caribou	Aug. 10–Sept. 30.
Unit 21(D)—north of the Yukon River and east of the Koyukuk River 1 caribou; however, 2 additional caribou may be taken during a winter season to be announced. Winter season to be announced.	Aug. 10–Sept. 30.
Unit 21(D)—remainder—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1–June 30.

Harvest limits	Open season
Moose:	
Unit 21(A)–1 bull	Aug. 20–Sept. 25. Nov. 1–Nov. 30.
Unit 21(B) and (C)—1 antlered bull	Sept. 5–Sept. 25.
Unit 21(D)—Koyukuk Controlled Use Area–1 moose; however, antlerless moose may be taken only during Aug. 27–31 and the February season. During the Aug. 27–Sept. 20 season a State registration permit is required. Moose may not be taken within one-half mile of the mainstem Yukon River during the February season. A 10–day winter hunt to occur between Feb. 1 and Feb. 28 will be opened by announcement of the Koyukuk/Nowitna National Wildlife Refuge Manager after consultation with the ADF&G area biologist and the Chairs of the Western Interior Regional Advisory Council and Middle Yukon Fish and Game Advisory Committee.	Aug. 27–Sept. 20. Winter season to be announced.
Unit 21(D)—remainder—1 moose; however, antlerless moose may be taken only during Sept. 21–25 and the February season. Moose may not be taken within one-half mile of the mainstem Yukon River during the February season. A 10–day winter hunt to occur between Feb. 1 and Feb. 28 will be opened by announcement of the Koyukuk/Nowitna National Wildlife Refuge Manager after consultation with the ADF&G area biologist and the Chairs of the Western Interior Regional Advisory Council and Middle Yukon Fish and Game Advisory Committee.	Sept. 5–Sept. 25. Winter season to be announced.
Unit 21(E)—1 moose; however, only bulls may be taken from Aug. 20–Sept. 25; moose may not be taken within one-half mile of the Innoko or Yukon River during the February season.	Aug. 20–Sept. 25. Feb. 1–Feb. 10.
Coyote: 10 coyotes; however, no more than 2 coyotes may be taken before October 1	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
Beaver: No Limit	Nov. 1–June 10.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Mar. 31.

(22) *Unit 22.* (i) Unit 22 consists of Bering Sea, Norton Sound, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from, but excluding, the Pastolik River drainage in southern Norton Sound to, but not including, the Goodhope River drainage in Southern Kotzebue Sound, and all adjacent islands in the Bering Sea between the mouths of the Goodhope and Pastolik Rivers:

(A) Unit 22(A) consists of Norton Sound drainages from, but excluding, the Pastolik River drainage to, and including, the Ungalik River drainage, and Stuart and Besboro Islands;

(B) Unit 22(B) consists of Norton Sound drainages from, but excluding, the Ungalik River drainage to, and including, the Topkok Creek drainage;

(C) Unit 22(C) consists of Norton Sound and Bering Sea drainages from, but excluding, the Topkok Creek drainage to, and including, the Tisuk River drainage, and King and Sledge Islands;

(D) Unit 22(D) consists of that portion of Unit 22 draining into the Bering Sea north of, but not including, the Tisuk River to and including Cape York, and St. Lawrence Island;

(E) Unit 22(E) consists of Bering Sea, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from Cape York to, but excluding, the Goodhope River drainage, and including Little Diomede Island and Fairway Rock.

(ii) You may hunt brown bear by State registration permit in lieu of a resident tag in the Northwest Alaska Brown Bear Management Area, which consists of Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A), if you have obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears, or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm to take beaver in Unit 22 during the established seasons;

(B) Coyote, incidentally taken with a trap or snare intended for red fox or wolf, may be used for subsistence purposes;

(C) A snowmachine may be used to position a hunter to select individual caribou for harvest provided that the animals are not shot from a moving snowmachine.

Harvest limits	Open season
HUNTING	
Black Bear 3 bears	July 1–June 30.
Brown Bear:	
Unit 22(A)—1 bear by State registration permit by residents of Unit 22(A) only	Sept. 1–May 31.
Unit 22(B)—1 bear by State registration permit by residents of Unit 22(B) only	Sept. 1–May 31.
Unit 22(C)	No open season.
Unit 22(E)—1 bear by State registration permit only	Aug. 1–May 31.
Unit 22—remainder—1 bear by State registration permit	Sept. 1–May 31.
Caribou: Unit 22(A) and (B)—5 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Moose:	
Unit 22(A)—1 bull; however, the period of Dec. 1–Jan. 31 is closed to hunting except by residents of Unit 22(A) only.	Aug. 1–Sept. 30. Dec. 1–Jan. 31.
Unit 22(B)—1 bull	Aug. 1–Jan. 31.
Unit 22(C)—1 antlered bull	Sept. 1–Sept. 14.
Unit 22(D)—that portion within the Kuzitrin River drainage—1 antlered bull	Aug. 1–Jan. 31.
Unit 22(D)—remainder—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31; no person may take a cow accompanied by a calf.	Aug. 1–Jan. 31.
Unit 22(E)—1 moose; no person may take a cow accompanied by a calf	Aug. 1–Mar. 31.
Muskox:	
Unit 22(D)—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. Six Federal permits may be issued in conjunction with the State Tier II hunt; the combined total of Federal and State permits will not exceed 39 permits.	Aug. 1–Mar. 15.
Unit 22(E)—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. Eleven Federal permits may be issued in conjunction with the State Tier II hunt; the combined total of Federal and State permits will not exceed 23 permits.	Aug. 1–Mar. 15.
Unit 22—remainder	No open season.
Beaver:	
Unit 22(A), (B), (D), and(E)—50 beaver	Nov. 1–June 10.
Unit 22—remainder	No open season.
Coyote: Federal public lands are closed to the taking of coyotes	No open season.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra): No limit	Sept. 1–Apr. 15.
Lynx: 2 lynx	Nov. 1–Apr. 15.
Marten:	
Unit 22(A) 22(B)—No limit	Nov. 1–Apr. 15.
Unit 22—remainder	No open season.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 15.
Wolverine: 3 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 22(A) and 22(B) east of and including the Niukluk River drainage—40 per day, 80 in possession	Aug. 10–Apr. 30.
Unit 22(E)—20 per day, 40 in possession	July 15–May 15.
Unit 22 Remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
Beaver:	
Unit 22(A), (B), (D), and (E)—50 beaver	Nov. 1–June 10.
Unit 22(C)	No open season.
Coyote: Federal public lands are closed to the taking of coyotes	No open season.
Fox, Arctic (Blue and White Phase): No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Apr. 15.
Lynx: No limit	Nov. 1–Apr. 15.
Marten: No limit	Nov. 1–Apr. 15.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Apr. 15.

(23) *Unit 23.* (i) Unit 23 consists of Kotzebue Sound, Chukchi Sea, and Arctic Ocean drainages from and including the Goodhope River drainage to Cape Lisburne.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use aircraft in any manner either for hunting of ungulates, bear, wolves, or wolverine, or for transportation of hunters or harvested species in the Noatak Controlled Use Area, which consists of that portion of Unit 23 in a corridor extending five miles on either side of the Noatak River beginning at the mouth of the Noatak River, and extending upstream to the mouth of Sapun Creek, is closed for the period August 25–September 15. This does not apply to the transportation of hunters or parts of ungulates, bear, wolves, or wolverine by regularly scheduled flights to communities by

carriers that normally provide scheduled air service;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag in the Northwest Alaska Brown Bear Management Area, which consists of Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A); if you have obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) You may take caribou from a boat moving under power in Unit 23;

(B) In addition to other restrictions on method of take found in this § ____.25, you may also take swimming caribou with a firearm using rimfire cartridges;

(C) If you have a trapping license, you may take beaver with a firearm in all of Unit 23 from Nov. 1–Jun. 10;

(D) For the Baird and DeLong Mountain sheep hunts—A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take sheep on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time;

(E) A snowmachine may be used to position a hunter to select individual caribou for harvest provided that the animals are not shot from a moving snowmachine.

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 23—except the Baldwin Peninsula north of the Arctic Circle—1 bear by State registration permit	Sept. 1–May 31.
Unit 23—remainder—1 bear every four regulatory years	Sept. 1–Oct. 10. Apr. 15–May 25.
Caribou: 15 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Sheep:	
Unit 23—south of Rabbit Creek, Kyak Creek and the Noatak River, and west of the Cutler and Redstone Rivers (Baird Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 20 full curl rams, based on a quota to be announced locally after the annual sheep population survey is completed. Federal public lands are closed to the taking of sheep except by Federally-qualified subsistence users.	Aug. 1–Sept. 30. The season will be closed when half of the quota has been harvested.
Unit 23—south of Rabbit Creek, Kyak Creek and the Noatak River, and west of the Cutler and Redstone Rivers (Baird Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 20 full curl rams, based on a quota to be announced locally after the annual sheep population survey is completed. Federal public lands are closed to the taking of sheep except by Federally-qualified subsistence users.	Oct. 1–Apr. 1. The season will be closed when the total quota of sheep has been harvested including those harvested during the Aug. 1–Sept. 30 season.
Unit 23—north of Rabbit Creek, Kyak Creek and the Noatak River, and west of the Aniuk River (DeLong Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 10 full curl rams in the DeLong Mountains, Units 23 and 26(A), based on a quota to be announced locally after the annual sheep population survey is completed.	Aug. 1–Sept. 30. The season will be closed when half of the quota has been harvested in the DeLong Mountains.
Unit 23—north of Rabbit Creek, Kyak Creek and the Noatak River, and west of the Aniuk River (DeLong Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 10 full curl rams in the DeLong Mountains, Units 23 and 26(A), based on a quota to be announced locally after the annual sheep population survey is completed.	Oct. 1–Apr. 1. The season will be closed when the total quota of sheep has been harvested in the DeLong Mountains including those harvested during the Aug. 1–Sept. 30 season.
Unit 23, remainder (Schwatka Mountains)—1 ram with 7/8 curl horn or larger	Aug. 10–Sept. 20.
Unit 23, remainder (Schwatka Mountains)—1 sheep	Oct. 1–Apr. 30.
Moose.	
Unit 23—that portion north and west of and including the Singoalik River drainage, and all lands draining into the Kukpuk and Ipewik Rivers—1 moose; no person may take a cow accompanied by a calf.	July 1–Mar. 31.
Unit 23—that portion lying within the Noatak River drainage—1 moose; however, antlerless moose may be taken only from Nov. 1–Mar. 31; no person may take a cow accompanied by a calf.	Aug. 1–Sept. 15. Oct. 1–Mar. 31.
Unit 23—remainder—1 moose; no person may take a cow accompanied by a calf	Aug. 1–Mar. 31.
Muskox:	
Unit 23—south of Kotzebue Sound and west of and including the Buckland River drainage—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. Eight Federal permits may be issued in conjunction with the State Tier II hunt; the combined total of Federal and State permits will not exceed 12 permits.	Aug. 1–Mar. 15.
Unit 23—remainder	No open season.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.

Harvest limits	Open season
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare: (Snowshoe and Tundra) No limit	July 1–June 30.
Lynx: 2 lynx	Dec. 1–Jan. 15.
Wolf: 5 wolves	Nov. 10–Mar. 31.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
Beaver:	
Unit 23—the Kobuk and Selawik River drainages—50 beaver	July 1–June 30.
Unit 23—remainder—30 beaver	July 1–June 30.
Coyote: No limit	Nov. 1–Apr. 15
Fox, Arctic (Blue and White Phase): No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Apr. 15.
Lynx: 3 lynx	Dec. 1–Jan. 15.
Marten: No limit	Nov. 1–Apr. 15.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Apr. 15.

(24) *Unit 24.* (i) Unit 24 consists of the Koyukuk River drainage upstream from but not including the Dulbi River drainage.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use motorized vehicles, except aircraft and boats, and licensed highway vehicles, snowmobiles, and firearms in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor is authorized only for subsistence taking of wildlife;

(B) You may not use aircraft for hunting moose, including transportation of any moose hunter or moose part in the Kanuti Controlled Use Area, which consists of that portion of Unit 24 bounded by a line from the Bettles Field VOR to the east side of Fish Creek Lake, to Old Dummy Lake, to the south end of Lake Todatonten (including all waters of these lakes), to the northernmost headwaters of Siruk Creek, to the highest peak of Double Point Mountain, then back to the Bettles Field VOR; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area;

(C) You may not use aircraft for hunting moose, including transportation of any moose hunter or moose part in the Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65° 57′ N. lat., 156° 41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek, then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(D) You may hunt brown bear by State registration permit in lieu of a resident tag in the Northwest Alaska Brown Bear Management Area, which consists of Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A), if you have obtained a State registration permit prior to hunting. You may not use aircraft in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) Arctic fox, incidentally taken with a trap or snare intended for red fox, may be used for subsistence purposes.

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.

Harvest limits	Open season
Brown Bear: Unit 24—1 bear by State registration permit	Sept. 1–May 31.
Caribou:	
Unit 24—that portion south of the south bank of the Kanuti River, upstream from and including that portion of the Kanuti-Kilolitna River drainage, bounded by the southeast bank of the Kodosin-Nolitna Creek, then downstream along the east bank of the Kanuti-Kilolitna River to its confluence with the Kanuti River—1 caribou.	Aug. 10–Mar. 31.
Remainder of Unit 24—5 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Sheep:	
Unit 24—(Anaktuvuk Pass residents only)—that portion within the Gates of the Arctic National Park—community harvest quota of 60 sheep, no more than 10 of which may be ewes and a daily possession limit of 3 sheep per person no more than 1 of which may be a ewe.	July 15–Dec. 31.
Unit 24—(excluding Anaktuvuk Pass residents)—that portion within the Gates of the Arctic National Park—3 sheep.	Aug. 1–Apr. 30.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10–Sept. 20.
Unit 24—remainder—1 ram with 7/8 curl horn or larger	Aug. 10—Sept. 20.
Moose:	
Unit 24—that portion within the Koyukuk Controlled Use Area—1 moose; however, antlerless moose may only be taken during the periods of Aug. 27–31, Dec. 1–Dec. 10, and Mar. 1–Mar. 10. During Aug. 27–Sept. 20, a State registration permit is required.	Aug. 27–Sept. 20. Dec. 1–Dec. 10. Mar. 1–Mar. 10.
Unit 24—that portion that includes the John River drainage within the Gates of the Arctic National Park—1 moose.	Aug. 1–Dec. 31.
Unit 24—the Alatna River drainage within the Gates of the Arctic National Park—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10.	Aug. 25–Dec. 31. Mar. 1–Mar. 10.
Unit 24—all drainages to the north of the Koyukuk River upstream from and including the Alatna River to and including the North Fork of the Koyukuk River, except those portions of the John River and the Alatna River drainages within the Gates of the Arctic National Park—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10.	Aug. 25–Sept. 25. Mar. 1–Mar. 10.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 antlered bull by Federal registration permit only.	Aug. 25–Sept. 25.
Unit 24—remainder—1 antlered bull. Public lands in the Kanuti Controlled Use Area are closed to taking of moose, except by eligible rural Alaska residents.	Aug. 25–Sept. 25.
Coyote: 10 coyotes; however, no more than 2 coyotes may be taken before October 1	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
Beaver: No limit	Nov. 1–June 10.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Mar. 31.

(25) *Unit 25.* (i) Unit 25 consists of the Yukon River drainage upstream from but not including the Hamlin Creek drainage, and excluding drainages into the south bank of the Yukon River upstream from the Charley River:

(A) Unit 25(A) consists of the Hodzana River drainage upstream from the Narrows, the Chandalar River drainage upstream from and including the East Fork drainage, the Christian River drainage upstream from Christian, the Sheenjek River drainage upstream from and including the Thluichohnjik Creek, the Coleen River drainage, and the Old Crow River drainage;

(B) Unit 25(B) consists of the Little Black River drainage upstream from but not including the Big Creek drainage, the Black River drainage upstream from and including the Salmon Fork drainage, the Porcupine River drainage upstream from the confluence of the Coleen and Porcupine Rivers, and drainages into the north bank of the Yukon River upstream from Circle, including the islands in the Yukon River;

(C) Unit 25(C) consists of drainages into the south bank of the Yukon River upstream from Circle to the Subunit 20(E) boundary, the Birch Creek drainage upstream from the Steese Highway bridge (milepost 147), the Preacher Creek drainage upstream from and including the Rock Creek drainage, and the Beaver Creek drainage upstream from and including the Moose Creek drainage;

(D) Unit 25(D) consists of the remainder of Unit 25.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use of motorized vehicles, except aircraft and boats, and licensed highway vehicles, snowmobiles, and firearms in the Dalton Highway Corridor Management Area, which consists of those portions of

Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. Residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor;

(B) The Arctic Village Sheep Management Area consists of that portion of Unit 25(A) north and west of Arctic Village, which is bounded on the east by the East Fork Chandalar River beginning at the confluence of Red Sheep Creek and proceeding southwesterly downstream past Arctic Village to the confluence with Crow Nest Creek, continuing up Crow Nest Creek, through Portage Lake, to its confluence with the Junjik River; then down the Junjik River past Timber Lake and a larger tributary, to a major, unnamed tributary, northwesterly, for approximately 6 miles where the stream forks into 2 roughly equal drainages; the boundary follows the easternmost fork, proceeding almost due north to the headwaters and intersects the Continental Divide; the boundary then follows the Continental Divide easterly, through Carter Pass, then easterly and northeasterly approximately 62 miles along the divide to the head waters of the most northerly tributary of Red Sheep Creek then follows southerly along the divide designating the eastern extreme of the Red Sheep Creek drainage then to the confluence of Red Sheep Creek and the East Fork Chandalar River.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) You may take caribou and moose from a boat moving under power in Unit 25;

(C) The taking of bull moose outside the seasons provided in this part for food in memorial potlatches and traditional cultural events is authorized in Unit 25(D) west provided that:

(*1*) The person organizing the religious ceremony or cultural event contact the Refuge Manager, Yukon Flats National Wildlife Refuge prior to taking or attempting to take bull moose and provide to the Refuge Manager the name of the decedent, the nature of the ceremony or cultural event, number to be taken, the general area in which the taking will occur;

(*2*) Each person who takes a bull moose under this section must submit a written report to the Refuge Manager, Yukon Flats National Wildlife Refuge not more than 15 days after the harvest specifying the harvester's name and address, and the date(s) and location(s) of the taking(s);

(*3*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in Unit 25(D) west;

(*4*) Any moose taken under this provision counts against the annual quota of 60 bulls.

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: Unit 25(D)—1 bear	July 1—June 30.
Caribou:	
Unit 25(C)—that portion south and east of the Steese Highway—1 bull by joint State/Federal registration permit only. The fall season will close when a combined State/Federal harvest of 30 bulls has been reached. The winter season will close when the combined fall and winter State/Federal harvest quota of 150 bulls for the Fortymile herd has been reached. The season closures will be announced by the Northern Field Office Manager, Bureau of Land Management after consultation with the National Park Service and Alaska Department of Fish and Game.	Aug. 10–Sept. 30. Nov. 15–Feb. 28.
25(C)—that portion north and west of the Steese Highway—1 caribou; however, only bull caribou may be taken during the Aug. 10–Sept. 20 season. During the winter season, caribou may be taken only with a Federal registration permit. The winter season will be closed by announcement of the Northern Field Office, BLM, when the quota of 30 caribou has been taken.	Aug. 10–Sept. 20. Feb. 1–Mar. 31.
Unit 25 (D)—that portion of Unit 25(D) drained by the west fork of the Dall River west of 150'' W. long.—1 bull	Aug. 10–Sept. 30. Dec. 1–Dec. 31.
Unit 25(A), (B), and the remainder of Unit 25(D)—10 caribou	July 1–Apr. 30.
Sheep:	
Unit 25(A)—that portion within the Dalton Highway Corridor Management Area	No open season.
Units 25(A)—Arctic Village Sheep Management Area—2 rams by Federal registration permit only. Public lands are closed to the taking of sheep except by rural Alaska residents of Arctic Village, Venetie, Fort Yukon, Kaktovik, and Chalkytsik during seasons identified above.	Aug. 10–Apr. 30.
Unit 25(A)—remainder—3 sheep by Federal registration permit only	Aug. 10–Apr. 30.
Moose:	
Unit 25(A)—1 antlered bull	Aug. 25–Sept. 25. Dec. 1–Dec. 10.
Unit 25(B)—that portion within Yukon Charley National Preserve—1 bull	Aug. 20–Sept. 30.
Unit 25(B)—that portion within the Porcupine River drainage upstream from, but excluding the Coleen River drainage—1 antlered bull.	Aug. 25–Sept. 30. Dec. 1–Dec. 10.
Unit 25(B)—that portion, other than Yukon Charley National Preserve, draining into the north bank of the Yukon River upstream from and including the Kandik River drainage, including the islands in the Yukon River—1 antlered bull.	Sept. 5–Sept. 30. Dec. 1–Dec. 15.
Unit 25(B)—remainder—1 antlered bull	Aug. 25–Sept. 25. Dec. 1–Dec. 15.
Unit 25(C)—1 antlered bull	Sept. 1–Sept. 15.

Harvest limits	Open season
Unit 25(D)(West)—that portion lying west of a line extending from the Unit 25(D) boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek and Lower Mouth Birch Creek to the Yukon River, then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzik River, then upstream along the west bank of the Hadweenzik River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek to Nelson Mountain on the Unit 25(D) boundary—1 bull by a Federal registration permit. Alternate permits allowing for designated hunters are available to qualified applicants who reside in Beaver, Birch Creek, or Stevens Village. A total of 60 permits will be issued (25 to Stevens Village residents, 25 to Beaver residents, and 10 to Birch Creek residents.) Moose hunting on public land in this portion of Unit 25(D)(West) is closed at all times except for residents of Beaver, Birch Creek, and Stevens Village during seasons identified above. The moose season will be closed when 60 moose have been harvested in the entirety (from Federal and non-Federal lands) of Unit 25(D)(West).	Aug. 25–Feb. 28.
Unit 25(D)—remainder—1 antlered moose	Aug. 25–Sept. 25. Dec. 1–Dec. 20.
Beaver:	
Unit 25, excluding Unit 25(C)—1 beaver per day; 1 in possession	Apr. 16–Oct. 31.
Unit 25(C)	No Federal open season.
Coyote: 2 coyotes.	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx:	
Unit 25(C)—2 lynx	Dec. 1–Jan. 31.
Unit 25—remainder—2 lynx	Nov. 1–Feb. 28.
Wolf:	
Unit 25(A)—No limit	Aug. 10–Apr. 30.
Remainder of Unit 25—10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 25(C)—15 per day, 30 in possession	Aug. 10–Mar. 31.
Unit 25—remainder—15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 25(C)—those portions within 5 miles of Route 6 (Steese Highway)—20 per day, 40 in possession	Aug. 10–Mar. 31.
Unit 25—remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
Beaver:	
Unit 25(C)—No limit	Nov. 1–Apr. 15.
Unit 25—remainder—50 beaver	Nov. 1–Apr. 15.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine:	
Unit 25(C)—No limit	Nov. 1–Feb. 28.
Unit 25—remainder—No limit	Nov. 1–Mar. 31.

(26) *Unit 26*. (i) Unit 26 consists of Arctic Ocean drainages between Cape Lisburne and the Alaska-Canada border including the Firth River drainage within Alaska:

(A) Unit 26(A) consists of that portion of Unit 26 lying west of the Itkillik River drainage and west of the east bank of the Colville River between the mouth of the Itkillik River and the Arctic Ocean;

(B) Unit 26(B) consists of that portion of Unit 26 east of Unit 26(A), west of the west bank of the Canning River and west of the west bank of the Marsh Fork of the Canning River;

(C) Unit 26(C) consists of the remainder of Unit 26.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use of aircraft in any manner for moose hunting, including transportation of moose hunters or parts of moose from Aug. 1–Aug. 31 and from Jan. 1–Mar. 31 in Unit 26(A). No hunter may take or transport a moose, or part of a moose in Unit 26(A) after having been transported by aircraft into the unit. However, this does not apply to transportation of moose hunters or moose parts by regularly scheduled flights to and between villages by carriers that normally provide scheduled service to this area, nor does it apply to transportation by aircraft to or between publicly owned airports;

(B) You may not use motorized vehicles, except aircraft and boats, and licensed highway vehicles, snowmobiles, and firearms in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket,

Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor;

(C) You may hunt brown bear by State registration permit in lieu of a resident tag in the Northwest Alaska Brown Bear Management Area, which consists of Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A), if you have obtained a State registration permit prior to hunting. You may not use aircraft in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) You may take caribou from a boat moving under power in Unit 26;

(B) In addition to other restrictions on method of take found in this ____.25, you may also take swimming caribou with a firearm using rimfire cartridges;

(C) In Kaktovik, a Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take sheep on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time;

(D) For the DeLong Mountain sheep hunts—A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take sheep on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 26(A)—1 bear by State registration permit	Sept. 1–May 31.
Unit 26(B) and (C)—1 bear	Sept. 1–May 31.
Caribou:	
Unit 26(A)—10 caribou per day; however, cow caribou may not be taken May 16–June 30. Federal lands south of the Colville River and east of the Killik River are closed to the taking of caribou by non-Federally qualified subsistence users from Aug. 1–Sept. 30.	July 1–June 30
Unit 26(B)—10 caribou per day; however, cow caribou may be taken only from Oct. 1–Apr. 30	July 1–June 30.
Unit 26(C)—10 caribou per day	July 1–Apr. 30
You may not transport more than 5 caribou per regulatory year from Unit 26 except to the community of Anaktuvuk Pass.	
Sheep:	
Unit 26(A) and (B)—(Anaktuvuk Pass residents only)—that portion within the Gates of the Arctic National Park—community harvest quota of 60 sheep, no more than 10 of which may be ewes and a daily possession limit of 3 sheep per person no more than 1 of which may be a ewe.	July 15–Dec. 31.
Unit 26(A)—(excluding Anaktuvuk Pass residents)—those portions within the Gates of the Arctic National Park—3 sheep.	Aug. 1–Apr. 30.
Unit 26(A)—that portion west of Howard Pass and the Etivluk River (DeLong Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 10 full curl rams in the DeLong Mountains, Units 23 and 26(A), based on a quota to be announced locally after the annual sheep population survey is completed.	Aug. 1–Sept. 30. The season will be closed when half of the quota has been harvested in the DeLong Mountains.
Unit 26(A)—that portion west of Howard Pass and the Etivluk River (DeLong Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 10 full curl rams in the DeLong Mountains, Units 23 and 26(A), based on a quota to be announced locally after the annual sheep population survey is completed.	Oct. 1–Apr. 1. The season will be closed when the total quota of sheep has been harvested in the DeLong Mountains including those harvested during the Aug. 1–Sept. 30 season.
Unit 26(B)—that portion within the Dalton Highway Corridor Management Area—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10–Sept. 20.
Unit 26(A)—remainder and 26(B)—remainder—including the Gates of the Arctic National Preserve—1 ram with 7/8 curl horn or larger.	Aug. 10–Sept. 20.
Unit 26(C)—3 sheep per regulatory year; the Aug. 10–Sept. 20 season is restricted to 1 ram with 7/8 curl horn or larger. A Federal registration permit is required for the Oct. 1–Apr. 30 season.	Aug. 10–Sept. 20. Oct. 1–Apr. 30.
Moose:	
Unit 26(A)—that portion of the Colville River drainage downstream from the mouth of the Anaktuvuk River—1 bull. Federal public lands are closed to the taking of moose by non-Federally qualified subsistence users.	Aug. 1–31.
Unit 26—remainder	No open season.
Muskox:	
Unit 26(C)—1 muskox by Federal registration permit only; 12 permits for bulls and 3 permits for cows may be issued to rural Alaska residents of the village of Kaktovik only. Public lands are closed to the taking of muskox, except by rural Alaska residents of the village of Kaktovik during open seasons.	Sept. 15–Mar. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.

Harvest limits	Open season
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):.	
Unit 26(A) and (B)—10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Unit 26(C)—10 foxes	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Apr. 15.
Wolf: 15 wolves	Aug. 10–Apr. 30.
Wolverine: 5 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
TRAPPING	
Coyote: No limit	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phase): No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Apr. 15.
Lynx: No limit	Nov. 1–Apr. 15.
Marten: No limit	Nov. 1–Apr. 15.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Apr. 15.

Dated: June 2, 2000.

Kenneth E. Thompson,

Acting Regional Forester, USDA—Forest Service.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

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June 30, 2000

Part III

Environmental Protection Agency

40 CFR Part 112

Oil Pollution Prevention and Response; Non-Transportation-Related Facilities; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[FRL–6707–6]

RIN 2050–AE64

Oil Pollution Prevention and Response; Non-Transportation-Related Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under section 311 of the Clean Water Act, EPA is amending the Facility Response Plan requirements in the Oil Pollution Prevention regulation for non-transportation-related facilities. The main purpose of these amendments is to provide a more specific methodology for planning response resources that can be used by an owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils. EPA has issued this rule in response to legislation which requires the Agency to issue regulations.

EFFECTIVE DATE: July 31, 2000.

ADDRESSES: You may review materials concerning this rulemaking in the Superfund Docket, Suite 105, 1235 Jefferson Davis Highway, Crystal Gateway I, Arlington, VA 22202. You may inspect the docket (Docket Number SPCC–9P) between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Federal holidays; and you may make an appointment to review the docket by calling 703–603–9232. You may copy a maximum of 266 pages from any regulatory docket at no cost. If the number of pages copied exceeds 266, however, you will be charged an administrative fee of $25 and a charge of $0.15 per page for each page after 266. The docket will mail materials to you if you are outside of the Washington, DC metropolitan area.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Oil Program Center, U.S. Environmental Protection Agency, at 703–603–8823 (davis.barbara@epamail.epa.gov); or the RCRA/Superfund Hotline at 800–424–9346 (in the Washington, DC metropolitan area, 703–412–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 800–553–7672 (in the Washington, DC metropolitan area, 703–412–3323).

SUPPLEMENTARY INFORMATION: The preamble is organized in the following outline:

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G. Unfunded Mandates Reform Act
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Introduction

A. Regulated Entities

Entities Potentially Regulated by this Rule Include:

Category	NAICS codes
Starch and Vegetable Fats and Oils Manufacturing.	NAICS 31122.
Warehousing and Storage.	NAICS 493.
Petroleum and Coal Products Manufacturing.	NAICS 324.
Petroleum Bulk Stations and Terminals.	NAICS 42271.
Crude Petroleum and Natural Gas Extraction.	NAICS 211111.
Transportation, Pipelines, and Marinas.	NAICS 482–486/488112-48819/4883/48849/492/71393.
Electric Power Generation, Transmission, and Distribution.	NAICS 2211.
Other Manufacturing	NAICS 31–33.
Gasoline Stations/Automotive Rental and Leasing.	NAICS 4471/5321.
Heating Oil Dealers ...	NAICS 454311.
Coal Mining, Non-Metallic Mineral Mining and Quarrying.	NAICS 2121/2123/213114/213116.
Heavy Construction ...	NAICS 234.
Elementary and Secondary Schools, Colleges.	NAICS 6111–6113.
Hospitals/Nursing and Residential Care Facilities.	NAICS 622–623.
Crop and Animal Production.	NAICS 111–112.

''NAICS'' refers to the North American Industry Classification System, a method of classifying various facilities. The NAICS was adopted by the United States, Canada, and Mexico on January 1, 1997 to replace the Standard Industrial Classification (SIC) code. This table is not exhaustive, but rather it provides a guide for you. Other types of entities not listed in the table could also be subject to the regulation. To determine whether this action affects your facility, you should carefully examine the criteria in § 112.1 and § 112.20 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. Statutory Authority

1. The Oil Pollution Act of 1990 and the Clean Water Act

Congress enacted the Oil Pollution Act (OPA) (Public Law 101–380) to expand oil spill prevention and preparedness activities, improve response capabilities, ensure that shippers and oil companies pay the costs of spills that do occur, provide an additional economic incentive to prevent spills through increased penalties and enhanced enforcement, establish an expanded research and development program, and establish a new Oil Spill Liability Trust Fund, administered by the U.S. Coast Guard (USCG). Section 4202(a) of OPA amends the Clean Water Act (CWA) section 311(j) to require regulations for owners or operators of facilities to prepare and submit ''a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a

hazardous substance'' (*i.e.,* a facility response plan or FRP). This requirement applies to any offshore facility and to any onshore facility that, ''because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone'' (*i.e.,* a ''substantial harm'' facility).

Section 311(j)(1)(A) of the CWA authorizes the President to issue regulations establishing methods and procedures for removal of discharged oil, and section 311(j)(1)(C) authorizes the President to issue regulations establishing procedures, methods, equipment, and other requirements to prevent discharges of oil from vessels and facilities and to contain such discharges. By Executive Order 12777 (56 FR 54757–70, October 22, 1991), the President has delegated to EPA the authority to regulate non-transportation-related onshore facilities under sections 311(j)(1)(A) and (C) and 311(j)(5) of the CWA. The President has delegated similar authority over transportation-related onshore facilities, deepwater ports, and vessels to the U.S. Department of Transportation (DOT). Within DOT, the USCG is responsible for developing requirements for vessels and marine transportation-related facilities.

2. Edible Oil Regulatory Reform Act

Congress enacted the Edible Oil Regulatory Reform Act (EORRA) (33 U.S.C. 2720) on November 20, 1995. Under this law, most Federal agencies must, in the issuance or enforcement of any regulation or the establishment of any interpretation or guideline relating to the transportation, storage, discharge, release, emission, or disposal of a fat, oil, or grease, differentiate among and establish separate classes for animal fats and oils and greases, fish and marine mammal oils, and oils of vegetable origin (as opposed to petroleum and other oils and greases). The Federal agency must consider the differences in the physical, chemical, biological, and other properties, and in the environmental effects, of the classes.

3. Appropriations Act

Under the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Public Law 105–276), which was signed into law on October 21, 1998, Congress directed EPA to issue regulations amending 40 CFR part 112 to comply with the requirements of EORRA.

C. Background of This Rulemaking

1. The Agency's Jurisdiction

The Memorandum of Understanding (MOU) between DOT and EPA, dated November 24, 1971, established the definitions of non-transportation-related facilities and transportation-related facilities. The definitions in the 1971 MOU are in Appendix A to 40 CFR part 112.

2. Coordination With the United States Coast Guard

In today's rule, EPA is modifying the existing FRP rule for non-transportation-related facilities that handle, store, and transport animal fats and vegetable oils. Today the Coast Guard is also modifying its rule for marine-transportation-related facilities that handle, store, and transport animal fats and vegetable oils. The two agencies have worked together closely to ensure uniformity in the proposed and final regulations whenever possible. Each agency's requirements are appropriate to the universe of facilities that it regulates. The two rules reflect the similarities and differences in the nature and activities of facilities regulated by the two agencies.

3. 1994 Facility Response Plan Rule

On February 17, 1993, EPA (''we'') published a proposed rule (58 FR 8824–8879) to revise the Oil Pollution Prevention regulation, which we originally promulgated under the Clean Water Act, to address the OPA facility response plan requirements. We received a total of 1282 comments on the proposed rule. We considered these comments in developing the 1994 final rule. On July 1, 1994, we published the FRP rule (59 FR 34070–340136) amending 40 CFR part 112 to add new planning requirements for worst case discharges to implement section 311(j)(5) of the CWA, as amended by OPA. Under the authority of section 311(j)(1)(A) and (C) of the CWA, we also required planning for small and medium discharges of oil, as appropriate.

a. The Clean Water Act applies to non-petroleum oils. The definition of ''oil'' includes oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil. 33 U.S.C. 1321(a)(1). In the preamble to the 1994 FRP rule (59 FR 34070–34136, July 1, 1994), we noted that for the purpose of CWA section 311(j) planning, the CWA includes non-petroleum oils. The non-petroleum oils regulated by part 112 include animal fats, such as lard and tallow; vegetable oils, such as corn oil, rapeseed oil, and soy bean oil; and other non-petroleum oils, such as coal tar, turpentine, and silicon fluids. See the definition of ''oil'' at 40 CFR 112.2.

b. Different rule requirements for non-petroleum oils. In the preamble to the 1994 FRP rule, we agreed with commenters that certain response equipment and strategies used for petroleum oil spills may be inappropriate for non-petroleum oil. Therefore, we adopted requirements giving more flexibility in estimating response resources to an owner or operator of a facility that handles, stores, or transports non-petroleum oil. We used the USCG approach to determine response resources for worst case discharges of non-petroleum oil. We required the owner or operator of a non-petroleum oil facility to: (1) Show procedures and strategies for responding to the maximum extent practicable to a worst case discharge; (2) show sources of equipment and supplies necessary to locate, recover, and mitigate discharges; (3) demonstrate that the equipment identified will work in the conditions expected in the relevant geographic areas (according to Table 1 of appendix E to part 112), and that the equipment and other resources will be able to respond within the required times; and (4) ensure the availability of required resources by contract or other approved means. Unlike our requirements for the owner or operator of a petroleum oil facility, we did not limit the owner or operator of a non-petroleum oil facility to using emulsification or evaporation factors in appendix E (the Equipment Appendix) to calculate response resources. In the 1994 FRP rule, we added section 7.7 to Appendix E to reflect these changes from the 1993 proposal. We stated that when there were results from research on such factors as emulsification or evaporation of non-petroleum oil, we might make additional changes (59 FR 34070, 34088, July 1, 1994. Based on our examination of recent research, in today's rule we have included these factors for the owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils. Owners or operators of facilities that handle, store, or transport non-petroleum oils other than animal fats and vegetable oils are not limited to using the emulsification or evaporation factors in appendix E.

4. Petition for Reconsideration

As described in the preamble to the proposed rule (67 FR 17227–17267, April 8, 1999), by a letter dated August 12, 1994, we received a ''Petition for Reconsideration and Stay of Effective

Date'' of the OPA-mandated final FRP rule as the rule applies to facilities that handle, store, or transport animal fats and vegetable oils. The petition was submitted on behalf of seven agricultural organizations (''the Petitioners''): the American Soybean Association, the Corn Refiners Association, the National Corn Growers Association, the Institute of Shortening & Edible Oils, the National Cotton Council, the National Cottonseed Products Association, and the National Oilseed Processors Association.

On October 20, 1997, we denied the petition to amend the FRP rule (62 FR 54508–54543). We found that the petition did not substantiate most claims that animal fats and vegetable oils differ from petroleum oils in properties and effects and concluded that the facts did not support a further differentiation between these groups of oils under the FRP rule. Instead, we found that a worst case discharge or substantial threat of discharge of animal fats and vegetable oils to navigable waters, adjoining shorelines, or the exclusive economic zone could reasonably be expected to cause substantial harm to the environment, including wildlife that may be killed by the discharge. We pointed out that the FRP rule already provides for different response planning requirements for petroleum and non-petroleum oils, including animal fats and vegetable oils. We disagreed with Petitioners' claim that all animal fats and vegetable oils are readily biodegradable and noted that when biodegradation does occur in the environment, it can lead to oxygen depletion and death of fish and other aquatic organisms. We also disagreed with Petitioners' claim that all animal fats and vegetable oils are non-toxic when spilled into the environment and should therefore be placed in a separate category from other ''toxic'' non-petroleum oils. Information and data we reviewed from other sources indicate that some animal fats and vegetable oils, their components, and their degradation products are toxic. Furthermore, we emphasized that toxicity is only one way that oil spills cause environmental damage. Most immediate environmental effects are physical effects, such as coating animals and plants with oil, suffocating aquatic organisms from oxygen depletion, and destroying food supply and habitats. We noted that toxicity is not one of the criteria in determining which on-shore facilities are high-risk and must prepare response plans. Rather, the criteria for determining high-risk facilities are certain facility and locational characteristics, because we expect that spills of oil from facilities with these characteristics may cause substantial harm to the environment.

5. FRP-Related Requests

On January 16, 1998, we received a request from the Animal Fat/Vegetable Oil Coalition to modify the FRP rule as it applies to facilities that handle, store, or transport animal fats and vegetable oils. We met with Coalition representatives on April 6, 1998 to clarify their request. On April 9, 1998, we received a second request amending two items in the previous request. The requests asked us to revise the FRP rule by creating a separate category for response planning for animal fat and vegetable oil facilities and a separate part of the Appendix with procedures for these facilities. The requests also included suggested language for the revised rule. These requests are addressed in section II.G of today's preamble.

6. 1999 Proposed Rule

On April 8, 1999, we published a proposed rule to amend the FRP requirements at 40 CFR part 112 (64 FR 17227–17267). The main purpose of the proposal was to provide a more specific methodology for planning response resources that can be used by an owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils. We issued the proposal in response to Public Law 105–276, October 18, 1998, which requires us to amend part 112. We requested public comments on the usefulness of the new procedure and tables for determining response equipment needs for animal fat and vegetable oil facilities. On May 18, 1999 (64 FR 26926–26927), we extended the public comment period through June 9, 1999. We received one comment supporting the proposed methodology and no comments specifically opposing the proposed methodology.

In Section II of today's preamble, we discuss comments received on major issues. In the Docket for this rulemaking (SPCC–9P), you will find a detailed Response to Comments document addressing all comments and supporting analyses. As shown in the Response to Comments document, we received no adverse comments on the definitions proposed in § 112.2 or the definitions (and groups of oils) proposed in appendix E. As described in section II.G of today's preamble, we have finalized those definitions as proposed, except for minor editorial changes.

In today's rule, we have also finalized most of the minor editorial changes that we included in the proposal, except that we did not change ''spill'' to the word ''discharge'' everywhere that it appears in appendix E and other sections of the rule. Although ''discharge'' is the term that is defined and used in the Clean Water Act, we did not make this change in phrases such as ''spill prevention and response'' and ''oil spill removal organization.''

II. Discussion of Issues

A. Response Planning Scenarios

In today's rule, EPA is retaining the requirement to plan for three specific scenarios for oil discharges: small (2,100 gallons or less), medium (between 2,100 and 36,000 gallons), and worst case. Most discharges are small or medium. Planning for responses to more commonly occurring discharges may be more beneficial to facilities than planning for a worst case discharge that has a lower probability of occurrence. Discharges of animal fats and vegetable oils less severe than a worst case scenario may pose a serious threat to navigable waters or adjoining shorelines, especially from the cumulative effects of several discharges, and can cause other adverse effects (62 FR 54508–54543, October 20, 1997).

The preamble to the April 8, 1999 proposal stated that EPA proposed to keep the same response planning levels for animal fats and vegetable oils, although EPA proposed to add separate sections for those oils. Several commenters did not agree with EPA's proposal to require three planning scenarios for animal fat and vegetable oil facilities; instead, they suggested that planning should be required only for worst case discharges, under the authority of OPA. One commenter agreed that planning for commonly occurring discharges is most valuable, and asserted that most commonly occurring discharges of vegetable oils are small; the commenter suggested planning for small and worst case discharges only so that EPA and Coast Guard rules are consistent. Another commenter supported EPA's proposal for three planning scenarios.

In the preamble to the 1994 FRP rule, EPA noted that although planning for several discharge amounts is not specifically mandated under OPA, EPA has broad regulatory authority under CWA section 311(j)(1)(C) for such a requirement. The Agency also made this point in the denial of the petition (62 FR 54508, 54509, October 20, 1997) and in the proposed rule (67 FR 17227, 17229, April 8, 1999). We also believe that EPA has regulatory authority under CWA section 311(j)(1)(A) for such a requirement.

A primary purpose of OPA was to expand oil spill prevention and preparedness activities. Different personnel and equipment may be necessary to respond to small, medium, and worst case discharges. In our review of FRPs submitted for animal fat and vegetable oil facilities, we found several facilities that show clear differences for the three planning scenarios. For example, a facility may use its own personnel and equipment to respond to a small discharge, call in an Oil Spill Removal Organization (OSRO) to assist the facility during a medium discharge, and allow a worst case discharge to be handled entirely by the OSRO. Planning can increase the effectiveness of response actions and can significantly reduce the spread of spilled oil, the environmental impacts of such spills, and cleanup costs. Commenters have not questioned these assertions.

EPA and the USCG regulate facilities with different physical activities and different response schemes, and the requirements of each agency are appropriate for the universe of facilities regulated by that agency. Specifically, each of the agencies addresses the activities for the facilities under its jurisdiction. EPA's non-transportation-related facilities generally have a greater potential for large discharges than USCG-regulated facilities. The worst case discharge from an EPA-regulated facility (generally the capacity of the largest bulk storage tank) is often greater by an order of magnitude or more than the worst case discharge from a USCG-regulated facility (determined by the piping capacity and flow rate for loading and unloading a vessel). Based on information about animal fat and vegetable oil FRPs provided to the EPA Regions, the mean worst case discharge (WCD) is approximately 2.0 million gallons; the median WCD is approximately 1.2 million gallons; and the largest WCD is over 20 million gallons. For Coast Guard-regulated facilities that handle only animal fats and vegetable oils, the mean worst case discharge was over 22,000 gallons; the median WCD was about 10,000 gallons; and the largest worst case discharge was less than 153,000 gallons.

EPA-regulated facilities also tend to have a larger number of oil transfers than USCG-regulated facilities, and they have a significant potential for small and medium discharges. Because of the greater diversity of structures and processes, oil can discharge in many ways and in a range of volumes at EPA-regulated facilities. At these facilities, there is a wide range of activities, and many parameters can affect discharges. Causes of oil discharges at EPA-regulated facilities can include tank failure, deterioration of tanks or valves, facility transfers to or from tank cars or tank trucks, and discharges from processing units. At USCG-regulated facilities, however, discharges usually result from human error or equipment failure. The discharge volume associated with these transfer activities is determined primarily by pump rate and pipe diameter and covers a narrower range than discharge volumes at EPA-regulated facilities.

We have examined discharge data for animal fats and vegetable oils to determine whether the distribution of different discharge volumes for these oils is similar to the pattern for all oils. In the FRP rule, the planning volumes for discharges other than a worst case discharge are based on an analysis of the Emergency Response Notification System (ERNS), which contains data on discharges from all sources. These data showed that the average reported discharge for all oils is 1,300 gallons, and 99.5 percent of the discharges of all oils were less than approximately 36,000 gallons. Thus, in the existing FRP rule the planning volume of 2,100 gallons rule or less for small discharges represents a realistic planning quantity. (See the Proposed FRP rule, 58 FR 8824, 8836, February 17, 1993).

We also reviewed data from the USCG's Marine Safety Information System, which provided some information that is not readily available in ERNS. Specifically, the database enabled us to identify which discharges are from EPA-regulated, non-transportation-related facilities. During the period 1992 to 1998, we found 28 reported non-petroleum oil discharges from non-transportation-related facilities or from the non-transportation segment of a transportation facility. The volume of these non-petroleum discharges ranged from 1 gallon to 7,500 gallons. Most discharges (24) were less than 1,000 gallons and only four were greater than or equal to 1,000 gallons. Fifty percent of the discharges were less than 20 gallons and 93 percent were less than 1,500 gallons.

According to these data, the distribution of quantities discharged for animal fats and vegetable oils is comparable to that for all other oils. In our proposed rule (67 FR 17227–17267, April 8, 1999), we requested comment on the reliability of these data and whether they are representative of discharges of animal fats and vegetable oils at other facilities. We requested that States or other parties who have data about the discharges of animal fats and vegetable oils provide this information to assist our rulemaking efforts. No commenter provided data on discharge volume distribution.

The FRP rule also provides for facilities where the range of possible discharge scenarios is small. Under today's rule, as under the pre-existing rule, a smaller facility may only need to plan for two scenarios or a single scenario if its worst case discharge falls within one of the specified ranges for small or medium discharges. Furthermore, case-by-case deviations may be allowed if they afford equal environmental protection.

To summarize, our response planning scenarios differ from those of the USCG. Unlike EPA, the USCG requires response planning for animal fats and vegetable oils at marine transportation-related facilities only for a worst case discharge and an Average Most Probable Discharge (the equivalent of EPA's small discharge). This difference, however, is the result of differences in the universe, nature, and characteristics of the facilities regulated by each agency. Each agency's requirements are appropriate to the universe of facilities that it regulates. Our existing information shows similar properties, effects, and discharge volume for animal fats and vegetable oils and other oils at EPA-regulated facilities. We conclude that our response planning scenario requirements for animal fat and vegetable oil facilities should be consistent with our response planning scenario requirements for petroleum facilities. We believe that such planning will be most useful for regulated facilities in helping to protect the environment.

B. Planning Response Resources

The primary changes to FRP requirements for animal fat and vegetable oil facilities in today's rule involve the addition of section 10.0 and Tables 6 and 7 to appendix E. Proposed ssction 10.0 described the approach for calculating planning volumes for a worst case discharge of animal fats and vegetable oils. We proposed the two new tables specifically for animal fats and vegetable oils, Table 6 for Removal Capacity Planning and Table 7 for Emulsification Factors. Several commenters supported the creation of separate provisions for animal fat and vegetable oil facilities. One commenter supported the proposed methodology, including Table 6, and the emulsification factors for animal fats and vegetable oils (Table 7). The commenter stated that Table 6 accounts for the potential for natural degradation of oil as spilled animal fats and vegetable oils undergo changes as well as percentages of loss and recovery

which will aid in response planning. No commenters opposed our approach in Section 10 or provided data suggesting different values for Tables 6 and 7. Today we are finalizing the proposed methodology and tables.

In the preamble to the USCG's proposed rule (64 FR 17222–17227, April 8, 1999), the USCG asked for public comment on the appropriateness of EPA's Tables 6 and 7 for animal fat and vegetable oil facilities. The animal fat and vegetable oil industry provided no comments indicating support of or opposition to the tables. In the interest of affording maximum flexibility to the regulated community, the USCG is offering the use of EPA's planning volume tables as an option, but not a requirement, in its final rule that is also published in today's **Federal Register**. The USCG notes that the use of these tables may allow certain facilities to provide a more appropriate level of response resources to mitigate an oil spill.

We have documented that the methodology in section 10 and Tables 6 and 7 is supported by recent scientific studies. These studies are summarized in the preamble of the proposed FRP rule (64 FR 17227, 17240, April 8, 1999). To arrive at the numbers in Table 6, we examined numerous studies on the fate and effects of animal fats and vegetable oils in the environment (62 FR 54508–54543, October 20, 1997). Experiments using three vegetable oils (olive oil, sunflower oil, and linseed oil) demonstrated that natural degradation occurred at a rate of between 3 and 8 percent per day (Mudge *et al.,* 1994). At some stage during the degradation process, the oils polymerized and degradation rates were reduced to less than 1 percent per day. With polymerization, soybean oil and sunflower oil form a concrete-like aggregate with soil and sand that cannot be readily degraded by bacteria and may remain in the environment for many years after they are spilled (Minnesota, 1963; Mudge, 1995, 1997a, 1997b). Petroleum oils also undergo oxidation and polymerization reactions and can form tars that persist in the environment for years. Animal fats and vegetable oils can also be transformed by other chemical reactions, such as hydrolysis.

Other reports are also summarized in the proposed FRP rule. Preliminary data from a study, which is being conducted for EPA by Battelle Columbus Laboratories, estimates that at 25°C, at least 20 to 25 percent of crude soybean oil was biodegraded after 25 days, and at least 15 to 39 percent of the crude canola oil was biodegraded after 365 days, depending on pH (Venosa and Alleman, Personal Communication, 1999). At 10°C, less biodegradation occurred. During biodegradation, an increase in toxicity was observed, using the Microtox test (ASTM, 1997).

Several studies described in the proposed FRP rule indicate that the degradation of animal fats and vegetable oils depends on a variety of factors. Factors that affect the biodegradation of oils include pH, dispersal of oil, dissolved oxygen, presence of nutrients, soil type, type of oil, and the concentration of undissociated fatty acids in water (Ratledge, 1994; Venosa *et al.,* 1996; Salanitro *et al.,* 1997). Based on the above information, we estimated that approximately 20 percent of the volume of a Group B animal fat or vegetable oil may be lost due to natural processes.

To evaluate the reasonableness of the recovery rates in Table 6 to appendix E, we have examined field data on recovery rates for discharges of animal fats and vegetable oils. According to the Coast Guard's Marine Safety Information System, for 664 discharges of animal fats and vegetable oils between 1984 and 1999 responded to by the Coast Guard, the data indicated that 39.9 percent of animal fats and vegetable oils discharged to the water were recovered. Similarly, 86.9 percent of the animal fats and vegetable oils discharged to land were recovered. The data did not account for the amount of water or solids, including soil or debris, that may have been in the recovered material. We believe that these recovery rates are consistent with the planned recovery rates in today's rule. We also note that today's rule requires temporary storage of twice the effective daily recovery capacity.

In today's FRP rule, we are finalizing this methodology as proposed. The methodology recognizes those differences that exist in the physical and chemical properties of petroleum oils and animal fats and vegetable oils. While most properties of these classes of oils are similar, some petroleum oils volatilize to a greater extent than most animal fats and vegetable oils, and some animal fats and vegetable oils can biodegrade more rapidly than petroleum oils under certain conditions. These properties are criteria that we considered in differentiating classes of oils under EORRA. The similarities and differences in properties and effects of petroleum oils and animal fats and vegetable oils are discussed further in 62 FR 54508–54543, October 20, 1997; the supporting Technical Document, which is available in the Docket; and in the proposed rule.

Although we recognize that degradation is affected by many factors and conditions that are specific to each spill, we are using the percentages of loss and recovery in Table 6 to aid in response planning. According to Table 6, facilities must plan to recover from the water approximately 15 percent of the total oil discharged during a 3-day period of sustained operations in the Rivers and Canals operating environment. Due to the narrowness of many of these operating environments, the spilled oil is more likely to become stranded on the shoreline. Facilities must plan to recover approximately 20 percent of the oil discharged during a 4-day period of sustained operations in the Nearshore, Inland, and Great Lakes operating environments. Because of the open nature of these operating environments, there will be a greater opportunity for on-water recovery before the oil is stranded on the shoreline.

In today's rule, we are also finalizing Table 7, which presents emulsification factors to account for the increases in volume that result when discharged oil forms emulsions. When an emulsion is formed in the environment, the oil changes appearance, and its viscosity can increase by many orders of magnitude (USDOC/NOAA, 1994). Removal of the oil becomes harder because of the increased difficulty in pumping viscous fluids with up to fivefold increases in volume.

Studies that apply to emulsification of animal fats and vegetable oils are described in the preamble of the proposed FRP rule. While there is no simple method for determining the tendency of oils to form emulsions in the environment, one study demonstrated that canola oil and crude oils have similar tendencies for emulsification in cold temperature tests (Allen and Nelson, 1983). Another study indicated that certain crude and refined vegetable oils form emulsions, ranging from 10 to 32 percent (Calanog *et al.,* 1999). On the hydrophilic-lipophilic balance (HLB) scale that characterizes the solubility of emulsifiers, some petroleum oils, vegetable oils, and animal fats have a similar range of HLB values in water-in-oil and oil-in-water emulsions used in commercial products (Knowlton and Pearce, 1993).

Based on similarities in chemical and physical characteristics of petroleum oils and animal fats and vegetable oils that have been detailed in the proposed FRP rule and in our earlier evaluation (62 FR 54508–54543, October 20, 1997), we are finalizing Table 7. The emulsification factors for animal fats and vegetable oils in Table 7 are similar

to those of petroleum oils in corresponding oil groups.

Today's rule also includes a provision for response capability caps or limits on the quantity of response resources which individual owners or operators are required to contract for in advance. Caps were developed during the USCG Vessel Response Plan and FRP rules and the 1994 EPA FRP rule to recognize the limits of available technology and private oil spill removal contractors in specific operating areas. The USCG and EPA response planning regulations provide for the increase of caps on contracted response resources at five year intervals. Caps were initially established on February 18, 1993 for all operating areas and were increased by 25 percent on February 18, 1998 for EPA-regulated facilities. The 1998 caps remain in effect for the purposes of this rule until the February 18, 2003 caps are developed.

The methodology in today's FRP rule will also reduce the information collection burden for some facilities by providing specific tables that an owner or operator may use to calculate response resources. Many owners or operators of animal fat and vegetable oil facilities have been using Tables 2 and 3 in the existing FRP regulation, even though they were not required to use them. These tables were developed to establish the planning volume and the planned response resources for petroleum oil discharges, including on-water recovery and onshore recovery of petroleum oils. Using the new Tables 6 and 7 in today's rule, some facility owners or operators will now be able to plan for a lower level of response resources. Our approach also maintains flexibility for an owner or operator to use an alternative methodology or approach as long as such methodology or approach achieves equivalent environmental protection.

In this rule, we have redesignated sections 8.0, 9.0 and 10.0 of the 1994 rule as sections 11.0, 12.0 and 13.0, respectively.

C. Higher Volume Port Areas

Under sections 7.2.3 and 7.7.4 of appendix E of the existing FRP rule, response resources identified in the FRP must be located so that they are capable of arriving at the scene of a discharge within the time specified for different response tiers. Tiering of response resources allows for the timely and orderly arrival of response resources and allows for the identification of response resources from outside the area of the facility to meet the planning requirements. Each response tier corresponds to the on-water recovery capacity necessary to respond to a percentage of the worst case discharge.

EPA recognizes the value of planning for the rapid arrival of response resources and the increased availability of response resources in certain areas where higher volumes of oil are handled, stored, and transported. For higher volume port areas, the response resources must arrive on-scene within six hours for Tier 1, 30 hours for Tier 2, and 54 hours for Tier 3. The arrival times for all other operating areas (including the Great Lakes, Inland, Nearshore, and Rivers and Canals) are 12 hours for Tier 1, 36 hours for Tier 2, and 60 hours for Tier 3. The arrival times are the same for petroleum and non-petroleum facilities, including animal fat and vegetable oil facilities.

In Appendix E of the proposed rule (64 FR 17227–17267, April 8, 1999), we proposed to continue to apply these arrival times to petroleum oil facilities in section 7.2.3 and to animal fat and vegetable oil facilities in section 10.2.3. We did not propose any changes to the response times for any facilities. Section 10.2.3 of appendix E in the proposed rule (64 FR 17227–17267, April 8, 1999) would require that animal fat and vegetable oil facilities calculate the required on-water recovery capacity of the response resources needed for each tier, and we included a formula to do so.

The commenters did not comment on the recovery capacity calculations, but they did comment on the response arrival times, which we did not propose to change. Commenters requested that we eliminate references to higher volume port areas and the 6-hour response times for animal fat and vegetable oil facilities in higher volume port areas. They suggested that because we designated higher volume port areas based on the location of petroleum oil facilities, the faster response times for facilities near these port areas should not apply to animal fat and vegetable oil facilities. We acknowledge that the designated higher volume port areas in our rule are based on the increased availability of response resources in areas where a higher volume of petroleum oils are handled, stored, and transported. Because the same equipment is generally used in responses to spills of petroleum oils and animal fats and vegetable oils with similar characteristics, these areas usually have the greatest availability of response resources for discharges of animal fats and vegetable oils.

CWA section 311(j)(5), as amended by OPA, requires facilities that prepare FRPs to ensure by contract or other approved means the availability of resources to remove a worst case discharge to the maximum extent practicable. Higher volume port areas have a greater number of response contractors and resources nearby. Therefore, we estimated a shorter response time for facilities in higher volume port areas compared with facilities located in all other operating areas. We believe that the increased availability of response contractors and reduced response times is likely to reduce damage to the environment resulting from discharges with little if any additional costs.

We believe that the availability of response equipment at higher volume port areas and the shortened response times (relative to other areas) is appropriate for animal fat and vegetable oil facilities located in these higher volume port areas. We did not create any new higher volume port areas based solely on the amount of animal fats and vegetable oils stored or shipped in the United States. Oil type is one factor that affects the performance of oil recovery equipment such as skimmers. Other factors are oil condition, oil viscosity; winds, waves, currents; air and sea temperatures; slick thickness, and the presence of debris (Schultze, 1999). The equipment that is used in responding to discharges of petroleum oils is generally the same equipment that is used to respond to discharges of animal fats and vegetable oils.

In May 1999, the USCG completed a study on the availability of response equipment (U.S. Coast Guard, 1999). This study examined among other issues the availability of mechanical recovery equipment in geographic areas of the United States and higher volume port areas. Based on our review of this report and our own analysis, we have determined that at most higher volume port areas the average estimated daily recovery capacity at Tier 1 is 511,627 barrels per day. We have determined that based on our review of 14 non-higher volume port areas, the average estimated daily recovery capacity at Tier 1 is 481,345 barrels per day. We conclude that greater amounts of response equipment are still found in higher volume port areas compared to other operating areas and that shortened response times are appropriate in higher volume port areas.

In the face of statutory mandates under OPA, the response community apparently has made a concerted effort to increase the response resources in other operating areas. In the future, EPA may examine whether the expanded availability of resources in non-higher volume port areas warrants a reduction in the response times in these operating areas.

The arrival times in today's FRP rule do not depend on the type of oil spilled. We believe that the equipment needed to respond to spills of animal fats and vegetable oils is generally the same as equipment needed to respond to spills of petroleum oils that have similar characteristics, such as viscosity and specific gravity.

We examined data on all FRPs submitted by animal fat and vegetable oil facilities, and found that about 30 percent of such facilities are in higher volume port areas. We believe those facilities can achieve more rapid response times than facilities in other areas. The data show that facilities in higher volume port areas are located within 6 hours or less of at least one USCG-classified level D or level E OSRO. Most animal fat and vegetable oil facilities located in higher volume port areas are near several USCG-classified level D or level E OSROs. All other animal fat and vegetable oil facilities who submitted FRPs are located within 12 hours of such an OSRO. Thus, all the facilities can meet the required FRP arrival times for response resources. In addition to a contract with an OSRO, the owner or operator of a facility can ensure the availability of necessary personnel and equipment within appropriate response times by other approved means. Under unique circumstances when appendix E of our rule is inappropriate for a particular facility, the owner or operator and the Regional Administrator (RA) may arrive at alternative methods for determining appropriate response resources. To date, no animal fat and vegetable oil facilities have suggested to RAs that these response times cannot be met or that alternative methods of determining resources are appropriate while maintaining equivalent levels of environmental protection.

For these reasons, we are finalizing sections 7.2.3 and 10.2.3 of appendix E as proposed.

D. Evaluation of Toxicity and Biodegradation

One commenter submitted two sets of comments with attachments describing the toxicity, biodegradation, and performance characteristics of certain animal fat and vegetable oil products. The papers attached to the comments had not been submitted to EPA previously in response to our Notice and Request for Data (59 FR 53742–53745, October 26, 1994) or as part of the Petition and requests to modify the FRP rule. The commenter stated that there is an emerging body of science that confirms differences among types of oils with respect to biodegradation and aquatic toxcity.

The papers attached to the comments and our evaluations of the papers were peer reviewed by EPA scientists in other offices. Peer reviewers were chosen from within EPA, because of the initial need to maintain the confidentiality of material in one of the studies submitted, and because of the expertise of the peer reviewers, who are recognized for their extensive experience and knowledge of the types of tests described in the papers and the interpretation of test results. After peer reviewers were selected, the commenter submitted another letter granting permission to place the confidential study in the docket and allow limited distribution of the study for rulemaking. The detailed evaluations and peer review comments can be found in the Docket.

Summary of our findings

Although toxicity and biodegradation were not specified in the 1994 FRP rule provisions or in the 1999 proposed FRP revisions as risk factors and do not form the basis for requirements to prepare FRPs, we have evaluated both sets of comments and attachments thoroughly. In the FRP rule, facility and locational characteristics are the basis for identifying certain high risk facilities that could reasonably be expected to cause substantial harm in the environment. We re-examined our earlier evaluation of the properties, environmental fate, and effects of spilled animal fats and vegetable oils to determine whether the additional material submitted by commenters would alter our recommendations on the type and quantity of resources needed for planning effective oil spill response and whether response planning requirements should be modified for facilities that handle, store, or transport animal fats and vegetable oils. After a careful evaluation of these comments and papers, we found that the proposed response planning requirements appropriately reflect the similarities and differences in properties and effects of petroleum oils, animal fats and vegetable oils, and other non-petroleum oils. We considered the impact of these similarities and differences among classes of oils on planning for effective response to oil spills.

Several of the papers that were submitted with the comments support the findings of our earlier evaluation (62 FR 54508–54543, October 20, 1997). None of the papers refutes our conclusion that response planning is essential for insuring efficient responses and minimizing the environmental harm from spills of animal fats and vegetable oils. Although we carefully considered all of the materials submitted, some papers did not provide adequate data to support their conclusions or allow full evaluation of the methods, their implementation, or validity and interpretation of results. The papers generally do not address physical effects of spilled oil, which are usually the most immediate and devastating effects.

One of the comment attachments contains EPA methods that were already discussed in detail and included in appendix I, Table 3 of our earlier evaluation; this table compared acute aquatic testing methods in our earlier evaluation (62 FR 54508, 54539, October 20, 1997). Another comment attachment includes ''Chemical Fate Testing Guidelines for Part 796.'' ''New Fate, Transport and Transformation Tests'' in the 835 series, which replace the tests in the 796 series, apply to toxic substances and pesticides regulated under the Toxic Substances Control Act and Federal Insecticide, Fungicide, and Rodenticide Act. These tests are not requirements of the 1994 FRP rule or the proposed revisions, which were promulgated under the Clean Water Act as amended by the Oil Pollution Act. Nevertheless, we evaluated the results of these tests and their relevance to oil spills. As noted above, we found nothing to support modification of our proposed requirements for animal fat and vegetable oil facilities.

Uses and Chemical Composition of Animal Fats and Vegetable Oils

Some of the papers that were submitted with the comments discuss expanding inedible uses of animal fats and vegetable oils, thus underscoring our finding that many animal fats and vegetable oils are not used as food but for inedible uses. In 1992, approximately 20.8 billion pounds of animal fats and vegetable oils were consumed in the United States, including over 14.8 billion pounds for edible uses and more than 5.9 billion pounds for inedible uses, such as soap, paint or varnish, feed, resins and plastics, lubricants, fatty acids, and other products (Hui, 1996; 62 FR 54508, 54510, October 20, 1997). These inedible products often contain additives or contaminants.

Several papers submitted with the comments discuss the importance of additives in developing vegetable oil-based products for new applications and show that the presence of additives can have a profound effect on biodegradation and toxicity of these products under given test conditions.

According to the materials submitted, additives can comprise as much as 20 percent of a lubricant. Such lubricants can differ greatly from the original vegetable oil in properties, toxicity, and environmental fate. Additives can include metals, emulsifiers, and perhaps dispersants that can greatly influence the toxicity and spread of spilled oil and hinder its recovery.

Physical Properties of Animal Fats and Vegetable Oils

Many of the properties described in the papers submitted with comments were addressed in our previous evaluation comparing the properties of petroleum oils with animal fats and vegetable oils (62 FR 54508–54543, October 20, 1997). These properties are closely linked to performance characteristics of certain products and applications. They include specific gravity, flash point, pour point, viscosity, and vapor pressure. We found that petroleum oils, animal fats, and vegetable oils share common properties and produce similar environmental effects (Crump-Wiesner and Jennings, 1975; USDOI, 1994; Frink, 1994). For further information on the properties of petroleum oils, animal fats and vegetable oils, see 62 FR 54508–54543, October 20, 1997, and the supporting Technical Document.

In our earlier evaluation, we also discussed the physical, chemical, and biological processes that transform animal fats and vegetable oils, including their oxidation (62 FR 54508–54543, October 20, 1997). We described the toxic effects of some oxidation products and the rancidity that results from oxidation of unsaturated fatty acids. Because of the similarity in properties of petroleum and non-petroleum oils, including animal fats and vegetable oils, many of the same methods are used for their containment, removal from the aquatic environment, and cleanup from shorelines (see 62 FR 54508–54543, October 20, 1997, and supporting Technical Document).

Most of the papers attached to the comments focus on performance characteristics of vegetable oil-based products for specific applications, particularly lubricants. While some of these characteristics, such as the ability to withstand friction and wear, relate to performance standards for certain applications, other characteristics are consistent with the properties we discussed in our earlier evaluation (62 FR 54508–54543, October 20, 1997). Several papers state that the additives that are utilized to overcome these limitations can be toxic or affect biodegradation of the vegetable oil-based product.

Toxicity

Earlier Consideration of Toxicity and Other Effects

The physical and toxic effects of animal fats and vegetable oils and petroleum oils, their constituents, and transformation products are discussed in detail in 62 FR 54508–54543, October 20, 1997 and the supporting Technical Document. Among our findings are the following:

- We emphasized that toxicity is only one of several mechanisms by which oil spills cause environmental damage. The deleterious environmental effects of spills of petroleum oils and non-petroleum oils, including animal fats and vegetable oils, are produced through physical contact and destruction of food sources as well as toxic contamination. Nearly all of the most immediate and devastating environmental effects from oil spills—such as smothering of fish or coating of birds and mammals and their food with oil—are physical effects related to the physical properties of oils and their physical interactions with living systems (Hartung, 1995).
- Our evaluation contained extensive discussion and tables comparing the toxic effects of animal fats and vegetable oils with petroleum oils. We described studies of the acute lethality of petroleum oils and animal fats and vegetable oils and other types of acute toxicity that can compromise the ability of animals in the wild to escape their predators. We discussed the range of chronic toxic effects that can be manifested by animals exposed to animal fats and vegetable oils. We summarized studies of mussels that show exposure to certain vegetable oils can cause mortality, growth inhibition, effects on shells and shell lining, and decreases in foot extension activity that is essential to survival. We detailed the effects of toxic constituents of animal fats and vegetable oils, including specific fatty acids and oxidation products formed by processing, heating, storage, or reactions in the environment.
- We described the limitations of the acute lethality (LC_{50}) laboratory tests that had been submitted with the August 12, 1994 petition. We found major deficiencies in the manner in which the tests were conducted, rendering the results highly questionable. Furthermore, these acute lethality tests measured only the death of organisms and did not describe acute toxic effects just short of lethality, such as serious irreversible damage. They also fail to measure long-term effects experienced by organisms and ecosystems or toxicity to other organisms or life-stages or toxicity under other environmental conditions. We asserted that these tests do not determine safe levels, but rather the concentrations of oil that kill half the organisms under a given set of experimental conditions. We discussed serious questions about the relevance of LC_{50} laboratory results to spills in the environment that have been raised by scientific experts, including the National Academy of Sciences.
- We stated that while low levels of certain animal fats and vegetable oils or their components may be essential constituents of the diet of humans and wildlife, adverse effects occur from exposure to high levels of these chemicals.

Report on Acute Lethality Tests (LC_{50}) Submitted by Commenter

The only toxicity studies submitted by the commenter are acute lethality (LC_{50}) tests. Our evaluations of these studies are detailed in the Response to Comments document and supporting analyses. The acute lethality tests submitted by the commenter provide additional examples of the toxicity of base oils (primary stocks used to formulate lubricants) and products based on vegetable oils. We discussed the limitations of acute lethality tests in detail in our earlier evaluation (see 62 FR 54508–54543, October 20, 1997, and supporting Technical Document) and summarize them below.

Acute Lethality Tests of Vegetable-Based Oil Sample BIO 25–30

The Parametrix report, which was developed for Agro Management Group and provided by Colorado State University, described an LC_{50} value of 8,766 mg/l for rainbow trout (Oncorhynchus mykiss) exposed to various concentrations of a vegetable-based Oil Sample BIO 25–30 in an acute range-finding toxicity test. In a 96-hour acute definitive toxicity test, a No Observed Effect Concentration (NOEC) of 5,000 mg/l; a Lowest Observed Effect Concentration (LOEC) of 10,000 mg/l; and an LC_{50} of 7,320 mg/l for Oil Sample BIO 25–30 were reported. The test protocols listed in the report are *Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms,* EPA/600/4–90/027F, August 1993 (hereafter referred to as ''ORD Methods''). According to the report, the tests deviate from protocols in ways that raise doubts about the validity of the test results.

Apparently, similar studies for petroleum oils were not conducted. Instead, the report compares the results of its tests on the vegetable-based oil sample with lower toxicity values reported in two papers, one that measured the LC_{50} of oil shale process water and its inorganic constituents in 96-hour tests with rainbow trout, and a second that determined the maximum safe limit for one type of crude oil in a 90-day study with cutthroat trout. Results of the tests on Oil Sample BIO 25–30, however, cannot be easily compared with the toxicity values derived from tests that were conducted using different experimental conditions, species, toxicity endpoints, and other factors. Because many factors influence toxicity, comparison of toxicity based on measurements of survival times, mortality, rates or fixed-time LC_{50} values are inadequate to establish the existence or magnitude of a toxic effect (Abel, 1996).

The report submitted with the comments contains: no information about sample preparation; no description of acclimation or aeration procedures, no information on feeding; no data describing the number of rainbow trout killed at each concentration of test material; no data on the actual concentration of parent compound or breakdown products in the test vessels and their change over time; no data on the period of time that dissolved oxygen was below the required level or observations on the effect of low oxygen on the rainbow trout in the test; no measurements of pH and temperature; no discussion of whether the vessels were covered; and, no statistical analysis of the data, including standard deviations, confidence limits, and slope of the dose-response curve. The absence of these data precludes evaluation of the accuracy of the LC_{50} determination. Among the deficiencies noted in the report are the following:

1. Unknown methods of sample preparation. The method of sample preparation is especially critical for oily substances. The report contains no description of sample preparation, no data on oil particle size, and no data on the concentration of the parent chemical and its breakdown products during the course of the tests. Thus, it is not clear what fractions or concentrations were actually tested, how these fractions or concentrations changed over time, or how such changes affected test results. Oil-in-water dispersions are usually unstable under the conditions of static tests, such as those described in the report (NAS, 1985a).

2. Unknown concentrations of test material encountered by fish during the test. Because the actual concentrations of the parent chemical and degradation products were not measured, the LC_{50} estimated in the test corresponds to unknown concentrations of the parent chemical and its degradation products. The tests appear to have relied on nominally designated concentrations (i.e., concentrations estimated, but not measured), which EPA and the peer reviewers believe is a highly questionable approach. The report contains no data on actual chemical concentrations of the chemical or its breakdown product, a critical determination in static tests where concentrations are affected by changes in oil-water partitioning through solubilization, chemical transformation, or the loss of oil through degradation or adsorption onto the test chambers or fish (Rand and Petrocelli, 1985; NAS, 1985a). While ORD Methods, which are cited in the report as the protocol used, allow gentle aeration of test solutions, they require that the concentration of test material not vary more than 20 percent at any treatment level during the exposure period. In the absence of measurements of actual chemical concentrations to which the fish were exposed or data proving that the test material does not volatilize or degrade, the tests would be considered invalid according to these guidelines.

3. Oxygen depletion. The toxicity of a chemical may be masked by depletion of oxygen when the biochemical oxygen demand (BOD) is high in the test solution, particularly in static tests (Rand and Petrocelli, 1985). The Parametrix report admits that the dissolved oxygen concentrations fell below the levels required by ORD Methods cited as the test protocol (USEPA/ORD, 1993). It cannot be determined whether rainbow trout were killed in the test by oxygen depletion or by toxicity. Aeration apparently was initiated at 72 hours for the range finding test and 48 hours for the definitive test, but the report contains no discussion of the aeration procedures, including whether all test vessels were aerated or how vigorous the aeration was.

4. Lack of statistical analysis of data. Because of the lack of data on the proportion of rainbow trout that died at each concentration level, and the failure to describe the method used to estimate the LC_{50} and provide a statistical analysis of the data, the accuracy of the LC_{50} cannot be determined. Statistical analyses, including confidence intervals and slope of the dose-response curve, are specified by the ORD Methods (USEPA/ORD, 1993). While the report states that no rainbow trout died at the lowest three concentrations of oil in the definitive test, and that the lowest observed effect concentration (LOEC) exceeded the LC_{50}, it is unclear when they died, or whether all trout died in the two groups exposed to the highest concentrations of oil. According to ORD Methods, additional lower concentration groups are added to an LC_{50} study when the mortality is 100 percent in the highest concentration groups within 1 hour of the start of the test.

Acute Lethality Toxicity Tests of Several Vegetable Oil-Based Products and Other Products

The International Lubricants, Inc. (ILI)—University of Idaho report summarizes aquatic toxicity tests that were conducted by Parametrix for a number of products, apparently using ORD Methods. Although the study contains material labeled as ''confidential,'' ILI has authorized limited distribution of the report for purposes of EPA rulemaking. As requested by ILI, the report is maintained in the docket for public inspection, but not copying.

According to the report, acute lethality tests (LC_{50} tests) with rainbow trout showed ''negligible toxicity'' for some vegetable oil-based products unless the formulations contained certain ingredients. The LC_{50}, BOD, and COD (Chemical Oxygen Demand) were reported for about 25 products, but critical information supporting the findings of the tests (for example, sample preparation, dissolved oxygen throughout the course of the test, response data for various concentrations, and statistical analyses) were not included in the report. Apparently only the 96-hour aquatic toxicity test with rainbow trout was conducted, although several other protocols were listed in the report. The report also includes two tables on toxicity that apparently represent hypotheses or rely on data that are not included in the report.

Acute Lethality Toxicity Tests of Lubricants

Hydraulic Oils. One paper attached to the comments describes LC_{50} values obtained in 96-hour rainbow trout tests using five concentrations of test material and a control (*Galvain et al.,* 1994). Trout were exposed to various concentrations of an oil-water dispersion created by using a central cylinder-housed propeller system to simulate physical dispersion of oil by waves and currents. While the paper

summarizes information about these oils, it does not include important details about the implementation of the protocol in individual tests or groups of tests (such as oil particle size) that are essential for evaluating the accuracy of the determination of LC_{50} values. For vegetable oils, the LC_{50} ranged from 633 parts per million (ppm) to >5000 ppm; LC_{50} values were 389 ppm to >5000 ppm, 80 ppm to >5000 ppm, and >5000 ppm for mineral oil, polyglycol, and synthetic ester, respectively. The paper states that the aquatic toxicity is caused by additives.

Lubricating Oils. A paper on lubricating oils that is attached to the comments emphasizes that a biodegradable product is not necessarily environmentally friendly (Baggot, 1992). Biodegradability must be combined with test data on potential human and environmental toxicity and bioaccumulation of the product, its components, or related substances to support its environmental benefits. Additives that can improve performance characteristics of a product may increase its human and environmental toxicity. Some substances partially biodegrade into products that are more toxic to aquatic life than the original substances. Tests are available to evaluate the toxicity of substances to aquatic organisms and soil organisms and the potential toxicity of substances to animals and humans.

European Laws, Requirements, Standards, and Guidelines. The commenter described the increasing interest in biodegradable lubricants in Europe and provided information on European requirements but did not specify how those standards should make a difference in our rule. Several papers describe European standards and guidelines, but do not provide specific information on toxicity and other effects. Two papers explain the Blue Angel standards, used in Germany, for base fluids and finished lubricants (Mang, 1993; Korff and Fessenbecker, 1992).

Relevance of Acute Lethality Tests to Oil Spills in the Environment and to the FRP Rule

Some papers attached to the comments describe results of acute lethality (LC_{50}) tests for vegetable oil-based products, base fluids, and additive systems (Parametrix, 1997; ILI and University of Idaho, 1996; Galvain *et al.,* 1994). Our earlier evaluation of the properties, fate, and effects of animal fats and vegetable oils detailed the limitations of this type of testing (62 FR 54508, 54515–54516, October 20, 1997, and supporting Technical Document).

Acute lethality tests measure only the death of organisms and usually provide no data on toxic effects other than death (NAS, 1985a; Rand and Petrocelli, 1985; Klaassen *et al.,* 1986). Animals that survive a toxic response nevertheless may suffer irreversible damage (NAS, 1985c). As we stressed in our earlier evaluation, such tests do not describe other acute toxic effects, long-term effects, effects on ecological communities or changes in predator-prey relationships, toxicity to other organisms or life-stages, or toxicity under other environmental conditions (62 FR 54508, 54516, October 20, 1997). The LC_{50} (lethal concentration 50) value or LD_{50} (lethal dose 50) value does not describe a ''safe'' level, but rather a level of test material at which 50 percent of test organisms are killed under the experimental conditions of the test (Rand and Petrocelli, 1985; Klaassen *et al.,* 1986). A high LC_{50} value indicates low acute lethal toxicity, because a large concentration of chemical is needed to cause 50 percent mortality.

Even if the acute lethality tests were conducted properly—and we have described significant doubts about the manner in which some of these studies were performed—serious questions remain about the relevance of the LC_{50} laboratory results to spills in the environment. We described these considerations in detail in our earlier evaluation (62 FR 54508, 54515–54516, October 20, 1997, and supporting Technical Document) and will discuss them briefly here.

The methods used in the Parametrix tests and similar tests are designed for effluents, not for oils with limited water solubility. The water-soluble fraction that is typically used in static tests does not simulate the dynamic changes that occur between the aqueous and oil phases unique to each spill (NAS, 1985a). In methods that attempt to simulate some types of oil spills by creating oil-water dispersions, the size of the oil particles in the test profoundly affects the composition and toxicity results. Only one paper attached to the comments used an oil-water dispersion method, and it did not report the size of oil particles (Galvain *et al.*, 1994).

The many test variables that influence estimates of LC_{50}—the nature of the chemicals or mixtures tested; test parameters (for example, route of administration, frequency and duration of exposure, mixing energy, temperature, salinity, static vs. flow-through systems, duration of observations); and biological factors (for example, species selected for testing, sex, age or life-stage, weight, contamination history of the organism)—rarely reflect the conditions that occur following a spill (Rand and Petrocelli, 1985; NAS, 1985a; Wolfe/USEPA, 1986; Abel, 1996). Oil concentrations from spills in the environment can be virtually unlimited and may well exceed LC_{50} concentrations. If environmental conditions were identical to those in the experiment, concentrations in the LC_{50} range would be expected to kill half of the organisms with sensitivity similar to rainbow trout. Among more sensitive aquatic populations, lethality would be even greater.

Furthermore, EPA reemphasizes that toxicity is only one way that oils can harm the environment. The most immediate and devastating environmental harm is often produced by physical effects, such as coating of plants and animals and suffocation (see 62 FR 54508, 54511, October 20, 1997). EPA has found that vegetable oils, animal fats, and petroleum oils share common properties and produce similar effects when spilled in the environment. The papers submitted with the comments do not acknowledge the importance of physical effects, although an earlier Petition by some of the same Commenters admitted that the physical effects of spilled animal fats and vegetable oils can harm the environment.

The comments, and papers attached to them, ignore the long-term effects of spills of animal fats and vegetable oils. Some animal fats and vegetable oils, their components, or breakdown products remain in the environment for years. Whether or not the oil persists in the environment, spilled oil can have long-lasting deleterious environmental effects. By contaminating food sources, reducing breeding animals and plants that provide future food, contaminating nesting habitats, and reducing reproductive success through contamination and reduced hatchability of eggs, oil spills can cause long-term effects years later even if the oil remains in the environment for relatively short periods of time.

Our earlier evaluation of the effects and fate of animal fats and vegetable oils spilled in the environment pointed out that they have a broad range of properties that influence their effects and persistence in the environment and that the presence of other compounds or other factors can affect the environmental fate and effects of oils (62 FR 54508, 54523, October 20, 1997). Although the papers that were submitted with the comments discussed vegetable oil-based products, these

formulations usually contain many other compounds that may be toxic or affect the toxicity of the oil or alter its persistence. For example, several papers attached to the comments showed that additives that were necessary for adequate performance of some lubricants often increased the aquatic toxicity and altered the biodegradability of the oil, according to the tests reported in the papers (Galvain *et al.*, 1994; Korff and Fessenbecker, 1992; Baggot, 1992; Rhodes, 1996). According to the papers, some formulations contain as much as 20 percent additives, including barium and lead compounds, lithium soaps, emulsifiers, and perhaps dispersants. The presence of toxic substances in a vegetable oil-based lubricant casts significant doubt on claims that all vegetable oils and products derived from them are non-toxic.

Unlike the European guidelines and German laws described in these papers that apply to specific uses of oils, EPA's 1994 FRP rule and today's FRP rule revisions, which were promulgated under the Clean Water Act as amended by the Oil Pollution Act, apply to planning for responses to oil spills. The 1994 FRP rule and today's FRP rule revisions apply to facilities that transfer large volumes of oil over water or handle, store, or transport 1 million gallons of oil or more and meet other criteria indicating that their discharges could reasonably be expected to cause substantial harm to the environment. The rule does not require performance standards for various applications or tests that are described in the papers submitted with the comments.

Furthermore, EPA's 1994 FRP rule and today's FRP rule revisions are on a vastly different scale from the European regulations described in the submitted papers. According to one paper attached to the comments, German lubricant demand is predicted to rise to about 115,000 to 170,000 tons per year, the equivalent of approximately 32.2 million gallons to 47.6 million gallons total for all German lubricants, if favorable conditions occur. By comparison, vegetable oil and animal fat facilities under EPA's jurisdiction have estimated a worst case discharge of as much as 20 million gallons from a single spill. The volume of oil discharged from two spills of this size is nearly as great as the maximum German lubricant demand projected for an entire year.

Biodegradation

Earlier Consideration of Biodegradation and Other Transformation Processes

We detailed the chemical and biological processes affecting animal fats and vegetable oils in the environment and described the environmental fate of animal fats and vegetable oils in actual spills in our earlier evaluation (62 FR 54508–54543, October 20, 1997). Several articles submitted by the commenters further support EPA's earlier findings.

EPA has found that:

- While some animal fats and vegetable oils degrade rapidly under certain conditions, others persist in the environment years after the oil is spilled.
- The process of biodegradation can cause environmental harm. When biodegradation occurs in the environment, it can lead to oxygen depletion and suffocation of fish and other aquatic organisms. Oxygen depletion can result from reduced oxygen exchange across the air-water surface below the spilled oil, or from the high BOD by microorganisms degrading oil (Crump-Wiesner and Jennings, 1975; Mudge, 1995). Under certain conditions, some animal fats and vegetable oils present a greater risk to aquatic organisms than other oils spilled in the environment, as indicated by their greater BOD (Groenewold et al., 1982; Institute, 1985; Crump-Wiesner and Jennings, 1975; 62 FR 54508, 54512–54513, October 20, 1997). While the higher BOD of vegetable oils is associated with greater biodegradability by microorganisms using oxygen, it also reflects the increased likelihood of oxygen depletion and suffocation of aquatic organisms under certain environmental conditions. Oil that is spilled in inland waters, such as small rivers and streams, may be especially harmful if there are limited oxygen resources in the water body and little dispersal of the oil.
- Every spill is different. How long the vegetable oil or animal fat remains in the environment after it is spilled, what proportion of the oil degrades and at what rate, what products are formed, and where the oil and its products are transported and distributed, are determined by the properties of the oil itself and those of the environment where the oil is spilled. Factors such as pH (acidity), temperature, oxygen concentration, dispersal of oil, the presence of other chemicals, soil characteristics, nutrient quantities, and populations of various microorganisms at the location of the spill profoundly affect the degradation of oil.
- Some products formed by biodegradation and other transformation processes are more toxic than the original oils and fats. Toxicity can also decrease or remain unchanged by biodegradation. We have summarized the toxic effects of animal fats and vegetable oils, their constituents, and degradation products in our earlier evaluation (see 62 FR 54508–54543, October 20, 1997).
- Spilled animal fats and vegetable oils can cause long-term deleterious environmental effects even if they remain in the environment for relatively short periods of time, because they destroy existing and future food sources, reduce breeding animals and plants, and contaminate eggs and nesting habitats. Adverse effects of spilled animal fats and vegetable oils include physical effects, such as coating and suffocation, oiling of the food supply, and toxicity. Spilled oils can also produce rancid odors, foul shorelines, clog water treatment plants, and catch fire when ignition sources are present.
- Real-world examples demonstrate the deleterious effects of spills of animal fats and vegetable oils and show that some animal fats and vegetable oils, their components, and breakdown products remain in the environment many years after a spill (see 62 FR 54508–54543, October 20, 1997).

Study Submitted by Commenter on Biodegradability of Certain Lubricants, Lubricant Additives, and Formulations Containing Telomer

In the ILI-University of Idaho study submitted by the commenter, biodegradability was measured in water and soil for a variety of compounds, including ILI telomers and other base stocks, lubricants, lubricant additives, gear oils, hydraulic fluids, and cutting fluids. Most of the products were based on vegetable oils, and some of them were compared to mineral base oils. The study report notes that the meaning of the term ''biodegradable'' is not exact and that biodegradability tests measure the disappearance of a certain amount of test material in a given period of time. It discusses persistence tests for three classifications of biodegradability (primary, ultimate, and inherent).

The ILI-University of Idaho report describes the results of two environmental persistence tests—the EPA Shake Flask Test and the OECD 301B Modified Sturm Test, two 28-day tests that measure ultimate biodegradability. The report states that over 100 samples in nine separate groups underwent testing using the EPA Shake Flask Test, and limited testing with two base stocks, two lubricants, and one standard was performed using the OECD 301B Modified Sturm test. A method was also developed to test soil biodegradation, and a different rank order for biodegradation in soil and water was noted. The report considers

the ''passing level'' as 60 percent biodegradation (40 percent remaining) after 28 days in the EPA Shake Flask test or 70 percent biodegradation (30 percent remaining) after 28 days, with 10 to 40 percent biodegradation in 10 days, for the Modified Sturm test. For many products, less than 40 percent of the oil remained in the aqueous system after 28 days. The results are based on atypical estimation techniques that involve correction of the curve using canola standards, despite wide variation (5–38 percent after 28 to 40 days) among the six standard canola curves, and fitting an unusual polynomial to the data.

The curves shown in the report indicate that except for one lubricant, at least 65 percent of every product tested remained after 4 days—a period of time that is used to plan for equipment for responses to oil spills at certain facilities. For canola standards, an average of 70 percent, ranging from 40–95 percent, remained at 4 days.

Studies of Biodegradability of Lubricants Submitted by Commenter

Hydraulic Oils. One paper attached to the comments describes the development of vegetable oil-based hydraulic products for use as lubricants for situations in which the lubricant may inadvertently leak into the environment (Galvain *et al.,* 1994). The paper lists some physical properties of the selected vegetable oil and formulated product and discusses performance concerns. Most of the paper describes performance tests, including bench tests, full pump tests, and field tests, that measure the effectiveness of the products in certain applications of lubricants. It emphasizes that any claim of environmental acceptability must be specific and supported by appropriate technical documentation. The paper states that most petroleum-based lubricants are environmentally acceptable by various standards and proposes criteria for a vegetable-oil based lubricant that passes most of the company performance tests. The paper describes two biodegradation tests of mineral oils and three other types of base oils that have been employed for lubricants—vegetable oils, polyglycols, and synthetic esters. Vegetable oils and a number of synthetic esters that were tested met the proposed criterion (>60 percent conversion to CO_2 in 28 days), while mineral oil formulations did not meet this criterion despite exhibiting some biodegradation.

Lubricants, Lubricating Oils, and Industrial Lubricants. One paper submitted with the comments describes the use of different additives to improve the performance of rapeseed oil and synthetic esters as lubricant base fluids, and the regulations affecting the use of additives (Korff and Fessenbecker, 1992). Lubricants described in the paper contain as much as 2–3 percent additives. The paper reports that certain additives allowed these fluids to achieve the same performance as mineral oil-based products. It describes different combinations of additives, such as antioxidants, corrosion inhibitors, and pour point depressants, that were investigated for their ability to overcome performance problems that have limited the use of rapeseed oil in lubricants. The paper explains that lubricants were developed to balance technical requirements and potential negative impacts by additives on biodegradability or ecotoxicological properties.

Another paper attached to the comments points out trends in the application of environmental legislation that promote the development of biodegradable lubricants in Germany and other European countries (Mang, 1993). Biodegradable lubricants represented 2 percent of the market share of lubricants in Germany in 1992. The paper forecast that they would soon occupy 10–15 percent of the demand for German lubricants.

Another paper submitted with the comments describes the ''real issues'' that must be evaluated to convincingly demonstrate that a lubricant reduces environmental impact (Baggot, 1992). It summarizes properties, performance characteristics, and other information about some types of oils that can be used in lubricants, but does not present detailed data from individual laboratory tests. The paper defines biodegradation as the decomposition of substances by biological systems.

The paper emphasizes that a biodegradable product is not necessarily environmentally friendly and cautions against unsubstantiated claims. It notes that advertisers have promoted the spurious notion that biodegradable products somehow automatically reduce the impact on the environment. Biodegradability tests measure the fate of a substance, not its impact. Some substances partially biodegrade into products that are more toxic to aquatic life than the original substances. Justifying the environmental benefits of a product requires relevant test data on biodegradability; mammalian toxicity; ecotoxicity; and bioaccumulation of the product, its components, or related substances. These data should demonstrate that the product is not likely to be hazardous in environmental media that it may pollute.

In principle, a full life cycle analysis of the manufacture, packaging, distribution, product use, and recycling or disposal of base fluid and additives should be performed before comparing environmental impacts of products. In practice, the evaluation generally focuses on the use part of the life cycle and potential impact from environmental contamination that may result from use or disposal.

To determine the biodegradability of different substances, results from biodegradability tests are compared with certain accepted standards. Tests of lubricants generally require the use of an emulsifier, because lubricants are usually not water soluble and often are a complex mixture of base fluids and chemical additives. While the technical limitations of some biodegradable fluids can be partially overcome by including additives in the product formulation, these additives may reduce the biodegradability of a product and can increase a product's human and environmental toxicity. Any kind of environmental contamination should be avoided and all spills and leaks cleaned up.

Another paper submitted with the comments appears to be a handout from a presentation on industrial lubricants (Rhodes, 1996). The paper lists considerations associated with biodegradable fluids. It describes lubricant composition, showing that the base stock can comprise 80–100 percent of the lubricant, while additives are 0–20 percent of the lubricant. Additives can be detrimental to the environmental acceptability of biodegradable fluid. Available or potential additives in biodegradable lubricants include viscosity modifiers, anti-oxidants, pour point modifiers, rust inhibitors, non-ferrous metal protectants, anti-wear and friction modifiers, extreme pressure additives, dispersants, detergents, and emulsifiers.

Relevance of Biodegradability Tests to Oil Spills in the Environment and to FRP Rule

As we have noted, biodegradability tests are not specified in the 1994 or today's revised FRP rule and do not form the basis for requirements to prepare FRPs. Several papers refer to ''passing EPA tests'' or ''EPA criteria'' or a ''passing level'' of 40 percent material remaining at 28 days. These tests are not requirements of the 1994 or today's revised FRP rule, and do not address important mechanisms by which oils cause environmental harm. The tests described in the papers and reports were not developed to implement Clean Water Act requirements, but as test

guidelines for pesticides and toxic substances regulated under the Toxic Substances Control Act (TSCA) and Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). These guidelines have been harmonized with some European guidelines. Several guidelines include recent versions of tests that are listed in the reports that were attached to comments. (See Fate, Transport, and Transformation Test Guidelines OPPTS 835.3110 Ready Biodegradability (EPA/OPPTS, 1998a) for six methods that permit screening of chemicals in an aerobic aqueous medium, including Modified Sturm Test; Ministry of International Trade and Industry test, Japan; and Closed Bottle test; OPPTS 835.3200 (EPA/OPPTS, 1998b) for the Zahn-Wellens/EMPA Test, and OPPTS 835.3210 for the Modified SCAS Test (EPA/OPPTS, 1998c).)

The 21-day or 28-day period used in the biodegradability tests in the papers attached to the comments has little relevance to prompt responses to oil spills or to the planning requirements of the FRP rule. Environmental effects can begin immediately after a discharge. To minimize environmental damage and reduce the spread of spilled oil, the FRP rule requires the first tier of response equipment to arrive within 6 to 12 hours of the discharge. FRP requirements for estimating the response equipment needed to recover oil from water and from the shoreline are based on responses during the first 3 to 4 days after a discharge, when the most immediate deleterious environmental effects occur. Nevertheless, bioremediation can be useful for long-term cleanup of some shoreline spills under carefully controlled conditions.

Spills of petroleum oils, animal fats and vegetable oils, and other non-petroleum oils have immediate and devastating physical effects, such as coating and suffocation, that injure and kill animals and plants, destroy food supplies and habitat, and eliminate breeding plants and animals. Some animal fats and vegetable oils and their components and breakdown products can also produce toxic effects and form compounds that linger in the environment. Thus, an oil spill can cause environmental damage even if all of the spilled oil is transformed completely into a harmless product in 28 days.

Even small discharges of animal fats and vegetable oils can produce significant environmental damage. For facilities that meet the FRP criteria, however, the volumes of the discharges may be very large indeed. EPA regulates vegetable oil/animal fat facilities with worst case discharges as large as 20 million gallons.

Reports submitted by one commenter show that 60–70 percent of most of the products tested degrade after 28 days. If the conditions in the area of the spill were similar to those in the laboratory tests, 300,000 to 400,000 gallons of oil would remain in the environment after 28 days if 1 million gallons of vegetable oils or animal fats were discharged.

Too often the term ''biodegradability'' has been misapplied to suggest the complete breakdown of a compound with formation of harmless products. In fact, the tests employed measure only the partial degradation of a compound over a given period of time. They do not analyze effects during biodegradation or consider toxicity or other deleterious effects of the breakdown products or their influence on persistence. Thus, applying the term ''biodegradable'' appropriately requires understanding the time period, conditions, and extent of biodegradability. Criteria have been established for various types of biodegradability tests.

While the papers submitted by the commenter describe biodegradability tests and performance results that are not required under the FRP rule, many support EPA's previous findings about the properties, fate, and effects of animal fats and vegetable oils (see 62 FR 54508–54543, October 20, 1997). For example, one paper attached to the comments recognizes that various tests and criteria have been developed (Baggot, 1992). It urges accurate definitions of biodegradability, including conditions related to the term. Other statements in the paper strongly support our earlier findings that deleterious effects can be produced even by biodegradable oils. The paper asserts that a biodegradable product is not necessarily environmentally friendly and that biodegradability tests measure only the fate of a substance and not its environmental impact.

In our previous evaluation, we found that while some animal fats and vegetable oils degrade rapidly under certain conditions, others persist in the environment years after the oil is spilled. We examined the immediate physical effects, such as coating and suffocation, that can be produced by spills of animal fats and vegetable oils, other non-petroleum oils, and petroleum oils. Utilization of oxygen by microorganisms during biodegradation can deplete oxygen and suffocate aquatic organisms. Even if the exposure period is relatively short, spilled oil can result in long-term effects. We warned—and the paper submitted with the comments affirms—that biodegradation can lead to the formation of products that are more toxic than the original substance (Baggot, 1992). We also emphasized that biodegradation and other transformation processes are not limited to animal fats and vegetable oils; petroleum oils and other non-petroleum oils also biodegrade and are transformed in the environment.

We disagree with some statements in the paper submitted with the comments that imply that biodegradability data, combined with toxicity data, are sufficient to support claimed environmental benefits of a product (Baggot, 1992). While these considerations are important, they do not consider other important effects of oil spills—the devastating environmental consequences of physical effects, such as coating and suffocation, that can occur with spills of any type of oil, the interference of oil spills with vital water treatment, or other impacts of spilled oil. Nor do they address fundamental concerns raised by the National Academy of Sciences and others about the relevance of laboratory test results to actual oil spills (NAS, 1985a). That spills of animal fats and vegetable oils can cause environmental harm through physical effects has been acknowledged in the previous Petition submitted by the same commenter on behalf of some of the same associations (62 FR 54508, 54527, October 20, 1997). EPA has further elaborated upon the environmental harm that can result from physical effects of oils in the Agency Decision Document and supporting documents regarding that Petition (62 FR 54508–54543, October 20, 1997, and supporting Technical Document).

Several other papers and reports submitted with the comments contain incorrect premises about the environmental damage that can be caused by biodegradable oils. Unlike the previous paper (Baggot, 1992), these papers and reports do not acknowledge that oils can cause damage when spilled in the environment regardless of whether they are ''biodegradable'' (Galvain *et al.*, 1994; Mang, 1992; Rhodes, 1996; ILI-University of Idaho, 1996). As our earlier evaluation demonstrated, rapid biodegradation of an oil does not insure that spills of the oil will do no harm. When biodegradation does occur in the environment, it can lead to oxygen depletion and death of fish and other aquatic organisms. Oxygen depletion can result from reduced oxygen exchange across the air-water surface below the spilled oil or from the high biological oxygen demand by microorganisms degrading oil (Crump-

Wiesner and Jennings, 1975; Mudge, 1995).

Whether biodegradation of a vegetable oil or animal fat occurs when the oil is spilled in the environment, how long the oil remains in the environment after it is spilled, what proportion of the oil is degraded and at what rate, what products are formed, and where the oil and its products are transported and distributed, are determined by the properties of the oil itself and those of the environment where the oil is spilled. Factors such as pH (acidity), temperature, oxygen concentration, dispersal of oil, the presence of other chemicals, soil characteristics, nutrient quantities, and populations of various microorganisms at the location of the spill profoundly influence the degradation of oil (Ratledge, 1994; Venosa *et al.,* 1996; Salanitro *et al.,* 1997; NAS, 1985b).

While the focus of several papers, reports, and other materials submitted with the comments is on the performance of lubricants rather than the technical issues that relate directly to EPA's FRP regulation, they underscore the importance of preventing spills of vegetable oils and responding effectively to oil spills when they occur. The papers show that vegetable oil-based lubricants require additives in order to perform satisfactorily as lubricants in many applications and that additives can alter the toxicity and biodegradability of the product (Galvain *et al.,* 1994; Korff and Fessenbecker, 1992; Mang, 1993; Baggot, 1992; Rhodes, 1996). When oil is spilled in the environment, species in the area of the oil spill are at risk from exposure to all of the components of the formulation—the vegetable oil base fluid, antioxidants, corrosion inhibitors, anti-wear and friction modifiers, pour point depressants, viscosity modifiers, and other additives or contaminants.

Among the additives described in the papers submitted with the comments are lead and barium compounds, phenolic and aminic antioxidants, lithium soaps, emulsifiers, and perhaps dispersants (Korff and Fessenbecker, 1992; Mang, 1993; Rhodes, 1996; ILI and University of Idaho, 1996). Emulsifiers can alter the toxicity and transformation of oils in the environment. They can complicate the recovery of oil spills, expand the amount of material that must be recovered, greatly decrease the effectiveness of recovery operations, and increase recovery costs.

According to one paper attached to the comments, dispersants and detergents are being developed for use in lubricants (Rhodes, 1996). Dispersants that may be authorized for oil spill response are on the Product Schedule of the National Contingency Plan (40 CFR 300.905—subpart J—Use of Dispersants and Other Chemicals). The use of dispersants for oil spill response in inland areas is limited by their toxicity and adverse environmental effects. Similar effects may well occur when lubricants containing such additives are spilled in the environment. If a facility discharges 1 million gallons of lubricant containing 20 percent additives, some 200,000 gallons of additives would be discharged into the environment. These compounds may have a profound effect on the behavior of oil in the environment, and some of them can inhibit the microorganisms that biodegrade oil.

E. Application of Executive Order 13101 (Purchasing)

Background. The President signed Executive Order 13101, ''Greening the Government through Waste Prevention, Recycling, and Federal Acquisition,'' on September 14, 1998. The Executive Order directs all Executive agencies to use the principles and concepts in EPA Guidance on Acquisition of Environmentally Preferable Products and Services, in addition to pilot and demonstration projects, in identifying and purchasing environmentally preferable products and services. ''Environmentally preferable'' refers to products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services. In addition to promoting environmentally preferable purchasing, the Executive Order encourages agencies to purchase bio-based products.

Comment. One commenter pointed out that Executive Order 13101 includes biobased products such as animal fats and vegetable oils. The commenter stated that through this Executive Order, the Federal government has recognized the environmentally preferable characteristics of animal fats and vegetable oils and has set out an action plan to substitute their use for other, less desirable products. The commenter believed that the same differences in characteristics that are used to promote the use of biobased products as environmentally preferred products should be recognized by EPA when regulating those products.

Response. EPA has developed guidance for identifying environmentally preferable products (USEPA/OPPTS, 1999). The guidance describes five guiding principles for applying environmentally preferable purchasing in the Federal government. These principles include: (1) Environmental considerations should become part of the normal purchasing practice, consistent with such traditional factors as product safety, price, performance, and availability; (2) Consideration of environmental preferability should begin early in the acquisition process and be rooted in the ethic of pollution prevention, which strives to eliminate or reduce, up-front, potential risks to human health and the environment; (3) A product or service's environmental preferability is a function of multiple attributes from a life cycle perspective; (4) Determining environmental preferability might involve comparing environmental impacts; in comparing environmental impacts, Federal agencies should consider the reversibility and geographic scale of the environmental impacts, the degree of difference among competing products or services, and the overriding importance of protecting human health; and (5) Comprehensive, accurate, and meaningful information about the environmental performance of products or services is necessary in order to determine environmental preferability.

The guidance notes that bio-based products may also be environmentally preferable. However, Federal purchasers should not assume that all bio-based products are automatically environmentally preferable. As with other products, agencies should consider a range of environmental impacts associated with bio-based products when making purchasing decisions. In some cases, factors such as pesticide use or high water consumption might make a bio-based product less environmentally preferable.

The guidance also includes a menu of environmental attributes. The impact of products and services on natural resources use, including ecosystem impacts; human health and ecological stressors, including conventional pollutants released to water and other stressors; and hazard factors, including aquatic toxicity, are among the attributes considered.

Executive Order 13101 and the EPA Guidance apply to government procurement of products and services rather than to planning requirements for effective response to oil spills. In our detailed comparison of the properties and effects of petroleum oils and animal fats and vegetable oils, we found that these oils share many of the properties of petroleum oils and produce many of the same environmental effects when discharged into the environment. Not only can animal fats and vegetable oils cause harmful environmental impacts at

the time of a discharge, but their adverse environmental effects may continue long after the discharge.

Furthermore, the properties of these bio-based products do not affect the probability that they might be discharged when they are handled, stored, or transported. Increasing the effectiveness of oil spill response through planning, as mandated by OPA, will reduce environmental harm and can reduce overall costs. Environmental benefits include avoided cleanup costs, value of lost product, avoided natural resource damages, and avoided property damage as a result of the mitigation of the severity of spills (USEPA, 1994).

F. Other Issues

1. Recovery Capacity

We also received a comment regarding section 6.0 of appendix E, which describes the process that facilities follow to determine the effective daily recovery capacity needed for oil recovery devices. The commenter stated that a sufficient body of measured and compared data does not exist for the recovery capacities for petroleum oils and animal fats and vegetable oils. Therefore, the commenter stated that we can only apply the recovery capacities for petroleum oils to animal fats and vegetable oils until a body of data for animal fats and vegetable oils indicates otherwise.

We agree. In section 6.0 we did not propose to use different recovery capacities for devices depending on the type of oil, or to make any other revisions to the section. The same methods and types of equipment are often used to respond to spills of petroleum oils and animal fats and vegetable oils with comparable properties (see 62 FR 54508–54543 October 20, 1997, and supporting Technical Document). Because of the similarity in properties, we would anticipate similar recovery capacities for devices that recover petroleum oils and animal fats and vegetable oils. Therefore, as the commenter suggests, we will continue to use the same criteria to determine recovery capacities for devices that are used to recover all types of oil.

2. Use of Mechanical Dispersal Equipment

Some commenters urged us to modify the 1994 FRP rule to clarify that ''other appropriate equipment'' includes mechanical dispersal equipment. We disagree that this change is necessary. We specifically discussed the use of mechanical dispersal devices in our 1997 Denial of Petition requesting amendment of the FRP rule (62 FR 54508, 54528, October 20, 1997). Although the use of such devices may be considered in response to an actual spill under certain conditions (e.g., river currents are too high for the effective use of a boom), specifically allowing the use of these devices alone in response planning does not meet the intent of OPA. The intent of OPA was for industry to plan for and secure the equipment and resources needed to respond to and remove a worst case discharge of oil, which may be a discharge of 1 million gallons or greater for a large animal fat or vegetable oil facility.

Mechanical dispersal of the animal fat or vegetable oil into the water column could shut down or negatively impact drinking water intakes because of flavor changes and odors, reduce cooling efficiency in cooling waters of power plants, contaminate food from receiving waters, increase BOD levels, violate water quality standards, cause sludges, and adversely impact benthic organisms and the resulting food chain in inland areas (62 FR 54508, 54528, October 20, 1997). Oil dispersed by mechanical means may resurface and cause further environmental damage in the same area or a different area depending on the characteristics of the water body.

In our denial of the Petition, we also provided an example of the ineffective use of mechanical dispersal to respond to a spill of rapeseed oil in Vancouver Harbor (Smith and Herunter, 1989; 62 FR 54508, 54525–54526, October 20, 1997). After an attempt to disperse the thick oil with multiple passes of small tug, booms were set up to contain the oil and skimmer boats recovered the oil. The authors of the paper emphasized that containing and recovering the spilled oil as soon as possible is critical to minimizing environmental damage, such as the death of oiled birds in the harbor. They urged the use of booms, testing transfer lines, having spill detection equipment in place, training on-site personnel, and reporting spills immediately as essential measures in reducing environmental harm.

Section 10.7.3 of appendix E in today's rule (section 7.7.3 of the 1994 FRP rule) requires that the owner or operator of the facility identify the response resources that are available by contract or other approved means. The equipment described in the response plan must include: (1) boom or other containment methods; (2) appropriate recovery devices; and, (3) other appropriate equipment necessary to respond to a discharge involving the type of oil carried. Other appropriate equipment can be described in the FRP, but only to supplement appropriate containment and recovery devices.

We have received no additional data from commenters that demonstrate the effectiveness of mechanical dispersal in supplementing appropriate containment and recovery devices for responses to discharges of animal fats and vegetable oils. We believe that such equipment will generally be ineffective in supplementing containment and recovery devices that are appropriate for responses to discharges of animal fats and vegetable oils and that it may well lead to environmental damage and other adverse effects, as described above. However, we believe that the FRP may describe mechanical dispersal equipment as appropriate to supplement containment and recovery devices in those cases where the facility owner or operator demonstrates the effectiveness of such equipment in supplementing appropriate containment and recovery devices for responses to discharges of animal fats and vegetable oils from the facility and shows that the use of such equipment will not increase environmental harm or produce other adverse effects, or when the relevant Area Contingency Plan identifies such equipment as appropriate for supplementing containment and recovery devices for responses to discharges of animal fats and vegetable oils from the facility.

We have refrained from being too prescriptive in defining or naming particular types of equipment in the regulation wherever possible to avoid limiting technology and innovation by responders. If you need advice about recovery devices, we recommend that you consult your trade association, local OSRO, or the appropriate EPA Regional office.

3. No-Action Option

Some commenters urged us to acknowledge that no action may be appropriate in certain circumstances.

We disagree. Although a ''no action'' option may be considered in response to an actual spill under certain conditions, such an option is not appropriate for planning purposes. The intent of OPA is for industry to plan for and secure the equipment and resources needed to respond to a worst case discharge, which may be a discharge of 1 million gallons or greater for a large vegetable oil facility.

The commenters are confusing requirements for preparedness and planning with the actual response. As we have emphasized repeatedly, nothing in the response planning regulations is intended to limit the actions of the owner or operator of the

facility, provided that those actions are in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), the Area Contingency Plan (ACP), and the Regional Contingency Plan and that the actions are approved by the OSC . See 64 FR 17227, 17235, April 8, 1999, 62 FR 54508, 54528, October 20, 1997, 59 FR 34070–34136, July 1, 1994.

4. FRP Preparation

In today's rule we are finalizing § 112.20(a)(4) as proposed. One commenter agreed with EPA's proposal. A second commenter asked for clarification of the need to prepare and submit a plan following the proposed requirements. Other commenters supported EPA's timeframe for resubmission of FRPs or the Agency's provision of a specific compliance schedule. The preamble of today's rule clarifies the need for preparation and submission of a plan.

Facilities with Approved Plans. Section 112.20(a)(4)(i) of the proposed rule would provide that if you are the owner or operator of an animal fat or vegetable oil facility with an approved FRP, you would not need to prepare or submit a revised plan, except as otherwise required by paragraphs (b), (c), and (d) of § 112.20. 64 FR 17227, 17253, April 9, 1999. Under § 112.20(d), an owner or operator of a facility subject to the FRP rule is required to revise and resubmit the revised portion of the response plan within 60 days of a facility change that materially may affect the response to a worse case discharge. Such a material change requiring a revision includes: a change in the facility's configuration that materially alters the information included in the response plan; a change in the type of oil handled, stored, or transferred that materially alters the required response resources; a material change in capabilities of the oil spill removal organizations that provide equipment and personnel to respond to certain discharges of oil; a material change in the facility spill prevention and response equipment or emergency response procedures; and, any other changes that materially affect the implementation of the response plan.

We agree with the second commenter's interpretation that the owner or operator of an animal fat or vegetable oil facility whose FRP has been approved by EPA need not submit a new one, except as required by paragraphs (b), (c), and (d) of this section. It may be beneficial, however, for an owner or operator with an approved plan to perform a recalculation using the new methodology, because EPA believes that the new methodology for calculating response resources for animal fat and vegetable oil facilities in today's rule may reduce the response resources required for some facilities. In addition, owners or operators of animal fat or vegetable oil facilities, as do all owners or operators subject to the FRP rule, need to be aware of the requirement to revise a plan and resubmit the revised portion if there is a material change at the facility as outlined above and in § 112.20(d). As such, an owner or operator of an animal fat or vegetable oil facility with an approved FRP plan for which a recalculation with the new methodology results in a change in the required response equipment or a change in resources that an OSRO will provide to the facility in response to a worst-case discharge, will need to revise the plan and the revised portion will need to be submitted to the Regional Administrator. We expect that this may occur in a number of cases even for facilities with approved plans, because the use of the new methodology in appendix E, section 10 may result in fewer resources required to respond to a worst case discharge for some facilities, and, thus, there may be an incentive to perform the recalculation due to the potential for reduced costs.

Facilities with Plans that Have Been Submitted to the Regional Administrator. We disagree with the commenter's interpretation that a facility owner or operator automatically must submit a new plan if the 5-year duration period for the approved plan has expired. Section 112.20(a)(4)(ii) of today's rule provides that the owner or operator of an animal fat or vegetable oil facility who has submitted a response plan but has not obtained EPA approval (either because the facility is not a significant and substantial harm facility for which approval is required or because the Agency has not yet acted on the final approval) must review the submitted plan and determine whether it meets or exceeds the requirements of today's rule for animal fat and vegetable oil facilities. If a recalculation using the new methodology indicates that the existing plan meets or exceeds the rule requirements, there is no need to resubmit the plan. Although not required by today's rule, we believe that it may be useful for an owner or operator of an animal fat or vegetable oil facility who has conducted a recalculation under the new methodology to keep evidence of that recalculation with his or her plan. If the plan must be revised, however, then the owner or operator must submit an amended plan that meets or exceeds the applicable requirements to the Regional Administrator within 90 days after today's date.

Newly Regulated Facilities. We agree with the second commenter's interpretation that the owner or operator of a newly regulated animal fat and vegetable oil facility that commences operations after the effective date of the rule must prepare and submit a plan in accordance with § 112.20(a)(2)(ii). If there are planned or unplanned changes in facility characteristics that subject an existing facility to regulation under § 112.20(f)(1), the owner or operator of that facility must prepare and submit a plan in accordance with paragraph (a)(2)(iii) or (iv) of this section, as appropriate. The plan must meet or exceed the applicable requirements of today's rule.

Facilities Amending Existing Plans. We agree with the second commenter's interpretation that a facility that is amending an existing plan because of material changes must submit a new plan that complies with the requirements of today's rule. This requirement is discussed further in the above section on Facilities with Approved Plans.

The facility owner or operator amending an existing plan must determine whether the existing plan meets or exceeds the requirements of today's rule. If the plan does not meet or exceed the requirements established in the rule, the owner or operator must revise and submit revised portions of an amended plan that meet or exceed the applicable requirements to the Regional Administrator in accordance with § 112.20(d).

We disagree with the commenter's interpretation that a facility owner or operator is always required to recalculate oil spill response resources, although recalculation will often be necessary. Other approaches for determining the adequacy of response resources, such as comparing factors that are multiplied in the recalculation, may be possible, as long as the owner or operator can show that these approaches can ensure that the plan meets or exceeds the applicable provisions of today's rule.

One commenter asked for clarification of the need to prepare and submit a plan following the proposed requirements. Plan preparation and submission depends on the adequacy of plan resources. Recalculation of response resources using the revised methodology described in appendix E, section 10, may or may not be necessary. After reviewing relevant factors used in the methodology, you

may find that your plan already meets or exceed the requirements of today's rule. If such is the case, you do not need to amend your plan. If your plan does not meet or exceed the requirements of today's rule, you must prepare and submit revised portions of your plan. Whenever you submit changes to your plan, you must provide the EPA-issued facility identification number as required by § 112.20(d)(3).

G. Agency Decision on the Requests for Modification of the FRP Rule

As part of this rulemaking, we have considered the requests that were submitted by the Animal Fat/Vegetable Oil Coalition on January 16, 1998, and amended on April 9, 1998. We agree in whole or in part with some items in the requests and disagree with others. Today's rule reflects our decision.

The requests ask us to revise the FRP rule by creating a separate category for response planning for animal fat and vegetable oil facilities and a separate Appendix with procedures for these facilities. The requests also include suggested language for the revised rule. Some requests for changes, particularly those requests that were also major issues considered in today's rule, are discussed below. The other requested changes and our decisions concerning them are in the Response to Comments document, which is available in the Docket for this rule.

• *Request.* Move definitions of animal fats and vegetable oils. Move the definitions of animal fats and vegetable oils from the preamble and Appendix E of the 1994 FRP rule to the definitions section, i.e., § 112.2, and modify the language slightly.

Decision. We agree. In today's rule, we are finalizing the definitions as proposed. Commenters also supported the change.

• *Request.* Clarify applicability dates. Clarify the applicability dates by which animal fat and vegetable oil facilities must comply with the rule.

Decision. We agree. Today's rule incorporates the applicability dates as proposed. In section II.F.4 of the preamble, we have discussed in detail the requirements for preparation and submission of FRPs.

• *Request.* Create separate regulatory provisions for animal fat and vegetable oil facilities. Create separate regulatory provisions for animal fat and vegetable oil facilities.

Decision. We agree. In today's rule, we are retaining separate provisions for animal fat and vegetable oil facilities. Commenters supported this aspect of the proposal rule.

• *Request.* Create categories of animal fats and vegetable oils that recognize physical characteristics. Modify the FRP rule to reflect the non-persistence of animal fats and vegetable oils.

Decision. We agree in part and disagree in part. We agree that persistence varies greatly according to the nature of the oil and environmental conditions. We changed the rule to reflect that decision. We disagree that all animal fats and vegetable oils are non-persistent. In today's rule, we eliminated the terms ''persistent'' and ''non-persistent'' for animal fats and vegetable oils. We also created new groups, i.e., groups ''A,'' ''B,'' and ''C'' for animal fats and vegetable oils, based on specific gravity. Commenters supported these rule revisions.

• *Request.* Create specific planning requirements for animal fat and vegetable oil facilities. Create specific planning requirements based on the type of animal fat or vegetable oil handled at the facility.

Decision. We agree with the need to create specific planning requirements for animal fat and vegetable oil facilities. As discussed in Section II.B of today's preamble, we proposed a new methodology for determining response resources needed for spills of animal fats and vegetable oils. One commenter supported the methodology, and others supported the creation of specific planning requirements for these facilities. In today's FRP rule, we have finalized the methodology as proposed, except for clarification and editorial changes.

• *Request.* Modify criteria for determining significant and substantial harm. Adopt criteria that are identical to those in the Coast Guard's proposed rule for facility response plans for marine-transportation-related facilities.

Decision. We disagree and are denying this request. We received several comments requesting this change and one comment supporting the criteria for substantial harm and significant and substantial harm as proposed. A comparison between the EPA rule and Coast Guard rule shows that most differences in the listed criteria result primarily from differences between the facilities regulated by each agency. Some factors listed in the EPA rule, such as a lack of secondary containment, are relevant to EPA-regulated facilities, which are generally onshore, but may be less effective for preventing spills from reaching navigable waters in marine-transportation-related facilities regulated by the Coast Guard. The EPA rule requires consideration of oil storage capacity as a significant and substantial harm criterion, while Coast Guard criteria include the type and quantity of oil handled. This difference in the two rules reflects the greater volumes of oil that are generally stored at EPA-regulated facilities (often an order of magnitude or more greater than Coast Guard-regulated facilities), the more varied activities, and greater number and types of transfers. If the type of oil is an important consideration, the Regional Administrator has broad discretion to consider other site-specific characteristics and environmental factors that are related to protecting the environment in the EPA rule.

• *Request.* Require plans only for worst case discharge. Modify the FRP rule to require planning for a worst case discharge only, as required by OPA.

Decision. We disagree and are denying this request. Section 4202(a) of the OPA amends CWA section 311(j) to require regulations for owners or operators of facilities to prepare and submit ''a plan for responding, to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge, of oil or a hazardous substance.'' This requirement applies to all offshore facilities and any onshore facility that, ''because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone'' (''substantial harm facilities''). Under authority of section 311(j)(1)(A) and (C) of the CWA, the 1994 FRP rule and today's rule also require planning for a small and medium discharge of oil, as appropriate.

We have discussed the rationale for retaining planning requirements for small, medium, and worst case discharges (59 FR 34070–34136, July 1, 1994; 62 FR 54508, 54509, October 20, 1997; 62 FR 17227, 17229, 17235–17236, April 8, 1999). EPA strongly believes that planning for small and medium discharges, which comprise about 95 percent of all discharges, is vital for environmental protection. Personnel and equipment needed for responses to small, medium, and worst case discharges are often different.

We received comments supporting one, two, or three planning levels. We have detailed the differences between facilities regulated by EPA and Coast Guard and our rationale for requiring three response planning levels in the preamble of today's rule in section II.A. In today's rule, we are retaining planning requirements for small, medium, and worst case discharges.

• *Request.* Proposed elimination of references to higher volume port areas

and 12-hour response time for all areas. Modify the rule by eliminating reference to Higher Volume Port Areas, including the 6-hour response time requirements, on the basis that these port areas were identified in connection with the location of petroleum facilities, and the concept of Higher Volume Port Areas has no relation to the location of animal fat and vegetable oil facilities.

Decision. We disagree and are denying this request. The availability of response equipment that is used for spills of animal fats and vegetable oils as well as petroleum oils is usually greatest in Higher Volume Port Areas. Response times are designed to reduce environmental harm from spills and allow the orderly arrival of response equipment so that it can be deployed effectively in spill response. We received several comments supporting elimination of this requirement and one comment supporting its retention. Our reasons for retaining this requirement are described in the proposed rule (64 FR 17227–17267, April 8, 1999) and summarized in the preamble in II.C. In today's rule, we have finalized this requirement as proposed.

• *Request.* Clarification of Use of Mechanical Dispersal Equipment. Modify the rule to clarify that ''other appropriate equipment'' includes mechanical dispersal equipment.

Decision. We disagree and are denying this request. The mechanical dispersion option does not meet the intent of OPA for planning purposes. The intent of OPA was for industry to plan for and secure the equipment and resources needed to respond to a worst case discharge, which may be a discharge of 1 million gallons or greater for a large vegetable oil facility. Mechanical dispersal of an animal fat or vegetable oil into the water column can produce a host of adverse impacts on drinking water intakes and aquatic organisms. A detailed discussion of our previous denials of this request and the rationale for our decision is in the preamble in section II. F.2.

• *Request.* No Action Option. Modify the rule to include the no action option.

Decision. We disagree and deny the request. Although the no action option may be considered in response to an actual spill under certain conditions, *i.e.,* river currents too high for the effective use of a boom, the no action option would not meet the intent of OPA for planning purposes. It would allow a large amount of oil to remain in the environment, which would in turn cause immediate physical effects to resources that could extend for considerable distances as the oil spreads. This oil would have the potential to remain in the environment for long periods of time. We have emphasized repeatedly that nothing in the response planning regulations is intended to limit the actions of the owner or operator of the facility, provided that those actions are in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), the Area Contingency Plan (ACP), and the Regional Contingency Plan and that the actions are approved by the OSC (see 62 FR 54508, 54528, October 20, 1997). We have rejected this request for a ''no action'' planning option before (62 FR 54508–54543, October 20, 1997). Our reasons for continuing to deny it are described in the preamble in section II.F.3.

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IV. Regulatory Analyses

A. Executive Order 12866: OMB Review

Under Executive Order 12866, (58 FR 51735–51744, October 4, 1993), we must determine whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The 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 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 new 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 rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Under CWA section 311(o), States are free to impose additional requirements, including more stringent requirements, that pertain to response planning for facilities that may have discharges of oil to navigable waters. The FRP regulation which we are revising in today's rule already recognizes that States may require facilities to prepare response plans. 40 CFR 112.20(h). Moreover, we have acknowledged that the number of States requiring preparation of response plans which are similar to or which overlap with the Agency's regulation has increased. 62 FR 7769, 7774 (Feb. 20, 1997). This rule does not preempt State law or regulations. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 12898 Environmental Justice

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. EPA has determined that the regulatory changes in this rule will not have a disproportionate impact on minorities and low-income populations. This rule will only affect the environmental standards of a small number of regulated entities that use or store large volumes of animal fats or vegetable oils that are located throughout all communities, not only in low income or minority communities. In addition, today's rule revisions will have a positive environmental effect for neighboring communities by helping affected facilites to plan for effective responses to oil discharges.

D. Executive Order 13045 Children's Health

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19883–19888, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. 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 Executive Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 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. We have no data that indicate that the types of risks resulting from animal fat or vegetable oil discharges have a disproportionate effect on children, and do not have reason to believe that they do so.

E. 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 OMB, 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 into 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. EPA believes that no tribal governments are included in its FRP-regulated community. Our records indicate that none of the animal fat and vegetable oil FRP facilities subject to this revised rule are located within Indian Lands. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice

and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is any business which is independently owned and operated and not dominant in its field as defined by Small Business Administration (SBA) regulations under section 3 of the Small Business Act; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

In this rulemaking, we are adding a methodology that can be used by facilities to plan for the appropriate volume of response resources needed for a worst case discharge of an animal fat or vegetable oil, similar to the existing methodology provided for petroleum oils. As a result, the overall economic effect of this regulation has been determined to reduce the reporting and recordkeeping burden for facilities that are required to prepare and maintain plans for the discharge of animal fats and vegetable oils because they no longer will be required to provide additional documentation to support their determinations. Furthermore, we believe that some facilities could realize additional cost savings as a result of calculations performed in estimating the appropriate amount of response planning resources needed to respond to a worst case discharge based on new information provided in proposed Tables 6 and 7. We have therefore concluded that today's final rule will not increase the regulatory burden for any small entities.

G. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 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 to State, local, and tribal governments, in the aggregate, or to 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 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 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 EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal 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.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This determination is based on the fact that the revisions are designed to clarify the requirements for certain facilities that store animal fats and vegetable oils to comply with the FRP rule. The revisions are designed to decrease the current reporting or recordkeeping burden and cost for these facilities and do not impose any additional requirements that might significantly or uniquely affect small governments for similar reasons. Furthermore, based on a survey of FRPs submitted to EPA, we did not identify any small governments that would be affected by this rulemaking. For these reasons, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

H. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* We prepared Information Collection Request (ICR) documents (EPA ICR No. 1630.05), and you may obtain a copy by contacting Sandy Farmer, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); Ariel Rios Building; 1200 Pennsylvania Avenue, NW.; Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling 202–260–2740. You may also view or download these ICRs at our ICR Internet site at http://www.epa.gov/icr. The information collection requirements are not effective until OMB approves them.

The FRP rule (40 CFR 112.20–21) requires that owners or operators of facilities that could cause ''substantial harm'' to the environment by discharging oil into navigable waters or adjoining shorelines prepare plans for responding, to the maximum extent practicable, to a worst case discharge of oil, to a substantial threat of such a discharge, and, as appropriate, to discharges smaller than worst case discharges. All facilities subject to this requirement must submit their plans to EPA. In turn, we review and approve plans submitted by facilities identified as having the potential to cause ''significant and substantial harm'' to the environment from oil discharges. Other facilities are not required to prepare FRPs but are required to document their determination that they do not meet the ''substantial harm'' criteria.

Through this final rulemaking, we are reducing the reporting and recordkeeping burden for facilities that are regulated under the FRP rule due to the storage of animal fats and vegetable oils by clarifying response planning requirements for these facilities. Specifically, we are finalizing our proposal to add a new methodology to allow facilities to calculate planning

volumes for a worst case discharge of animal fats or vegetable oils similar to the methodology provided for discharges of petroleum oils. Currently these facilities are required to identify in their plans the procedures used to determine the appropriate amount of resources needed to respond to a worst case discharge of a non-petroleum oil. As a result, we believe that the overall economic effect of this final rule will be to reduce the reporting and recordkeeping burden for these facilities.

In addition, we are allowing case-by-case deviations for facility response planning levels. In the proposed rulemaking, we solicited comment on whether to allow facilities to combine response planning at either the small and medium stage, or the medium and large stage for discharges of animal fats and vegetable oils. Based on those comments (see section II. A of this preamble), and on our own study of the different types of response plans, we have decided to retain all three planning levels. We estimated the cost savings from eliminating a response planning level to be minimal, because our Regional Administrators already give consideration to unique facility characteristics during their review of FRPs in allowing plan deviations.

EPA has information to suggest that certain bulk storage facilities may store large quantities of both petroleum oils and animal fats/vegetable oils in the same tanks but at different times. We have not included these facilities within the scope of our economic analysis for this rule, because the goal of this regulation is to address response planning requirements for those facilities storing only animal fats or vegetable oils. We believe that facilities which store both types of oils in the same tanks at different times should follow the response planning requirements for petroleum oils.

We do not expect the number of facilities that are subject to the requirements to develop an FRP and maintain the plan on a year-to-year basis to change as a result of this rulemaking. In the current ICR, we estimate that 5,465 facilities would be required to develop and submit FRPs. Of these 5,465 facilities, we estimate that approximately 63 facilities (owned or operated by approximately 34 companies) are required to develop and submit FRPs because of the storage of animal fats and vegetable oils. We have previously estimated that it requires between 99 and 132 hours for facility personnel in a large facility (i.e., total storage capacity greater than 1 million gallons) and between 26 and 46 hours for personnel in a medium facility (i.e., total storage capacity greater than 42,000 gallons and less than or equal to 1 million gallons) to comply with the annual, subsequent-year reporting and recordkeeping requirements of the FRP rule. We have also estimated that a newly regulated facility will require between 253 and 293 hours to prepare a plan in the first year. We estimate that the present information collection burden of the FRP rule for facilities that are regulated due to the storage of animal fats and vegetable oils to be approximately 6,867 hours a year. Through this rulemaking, we are reducing that burden by approximately five hours for a large facility and two hours for a medium facility. This proposed reduction would result in an annual average burden of 6,587 hours.

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 required to perform the following tasks: (1) Review instructions; (2) develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; (3) adjust the existing ways to comply with any previously applicable instructions and requirements; (4) train personnel to be able to respond to a collection of information; (5) search data sources; (6) complete and review the collection of information; and (7) transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. In the proposed rule, we requested comments on our need for this information, the accuracy of the provided burden estimates, and the accuracy of the supporting analyses used to develop the burden estimates. We also requested suggestions on methods for further minimizing respondent burden, including the use of automated collection techniques. No comments were received on either of these issues.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''). Public Law 104–113, section 12(d) (15 U.S.C. 272 note) 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 such as materials specifications, test methods, sampling procedures, and 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 consensus standards.

This rulemaking does not involve technical standards. We received no comments on this aspect of the rulemaking.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of 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 July 31, 2000.

List of Subjects in 40 CFR Part 112

Environmental protection, Fire prevention, Flammable materials, Materials handling and storage, Oil pollution, Oil spill response, Petroleum, Reporting and recordkeeping requirements, Tanks, Water pollution control, Water resources.

Dated: May 24, 2000.

Carol M. Browner,

Administrator.

For the reasons discussed in the preamble, the Environmental Protection Agency amends 40 CFR part 112 as follows:

PART 112—OIL POLLUTION PREVENTION

1. The authority citation for part 112 is revised to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

2. Amend § 112.2 to add the following definitions in alphabetical order to read as follows:

§ 112.2 Definitions.

* * * * *

Animal fat means a non-petroleum oil, fat, or grease of animal, fish, or marine mammal origin.

* * * * *

Non-petroleum oil means oil of any kind that is not petroleum-based, including but not limited to: Fats, oils, and greases of animal, fish, or marine mammal origin; and vegetable oils, including oils from seeds, nuts, fruits, and kernels.

* * * * *

Petroleum oil means petroleum in any form, including but not limited to crude oil, fuel oil, mineral oil, sludge, oil refuse, and refined products.

* * * * *

Vegetable oil means a non-petroleum oil or fat of vegetable origin, including but not limited to oils and fats derived from plant seeds, nuts, fruits, and kernels.

* * * * *

3. Amend § 112.20 by:

a. adding paragraph (a)(4) to read as set forth below;

b. revising the phrase ''section 10'' to read ''section 13'' in the second sentence of paragraph (f)(1)(ii)(B);

c. revising the word ''spill'' to read ''discharge'' in paragraph (f)(1)(ii)(D);

d. revising the word ''spills'' to read ''discharges'' in paragraph (f)(3)(i); and

e. revising the words ''spill'' and ''spilled'' to read ''discharge'' and ''discharged'', respectively, wherever they appear in paragraph (h).

§ 112.20 Facility response plans.

(a) * * *

(4) *Preparation and submission of response plans—Animal fat and vegetable oil facilities.* The owner or operator of any non-transportation-related facility that handles, stores, or transports animal fats and vegetable oils must prepare and submit a facility response plan as follows:

(i) *Facilities with approved plans.* The owner or operator of a facility with a facility response plan that has been approved under paragraph (c) of this section by July 31, 2000 need not prepare or submit a revised plan except as otherwise required by paragraphs (b), (c), or (d) of this section.

(ii) *Facilities with plans that have been submitted to the Regional Administrator.* Except for facilities with approved plans as provided in paragraph (a)(4)(i) of this section, the owner or operator of a facility that has submitted a response plan to the Regional Administrator prior to July 31, 2000 must review the plan to determine if it meets or exceeds the applicable provisions of this part. An owner or operator need not prepare or submit a new plan if the existing plan meets or exceeds the applicable provisions of this part. If the plan does not meet or exceed the applicable provisions of this part, the owner or operator must prepare and submit a new plan by September 28, 2000.

(iii) *Newly regulated facilities.* The owner or operator of a newly constructed facility that commences operation after July 31, 2000 must prepare and submit a plan to the Regional Administrator in accordance with paragraph (a)(2)(ii) of this section. The plan must meet or exceed the applicable provisions of this part. The owner or operator of an existing facility that must prepare and submit a plan after July 31, 2000 as a result of a planned or unplanned change in facility characteristics that causes the facility to become regulated under paragraph (f)(1) of this section, must prepare and submit a plan to the Regional Administrator in accordance with paragraphs (a)(2)(iii) or (iv) of this section, as appropriate. The plan must meet or exceed the applicable provisions of this part.

(iv) *Facilities amending existing plans.* The owner or operator of a facility submitting an amended plan in accordance with paragraph (d) of this section after July 31, 2000, including plans that had been previously approved, must also review the plan to determine if it meets or exceeds the applicable provisions of this part. If the plan does not meet or exceed the applicable provisions of this part, the owner or operator must revise and resubmit revised portions of an amended plan to the Regional Administrator in accordance with paragraph (d) of this section, as appropriate. The plan must meet or exceed the applicable provisions of this part.

* * * * *

§ 112.21 [Amended]

4. Amend § 112.21 by revising the phrase ''section 10'' to read ''section 13'' in the second sentence of paragraph (c). C to Part C—[Amended]

Appendix C to Part C—[Amended]

5. Amend Appendix C to part 112 by:

a. revising the phrase ''section 10'' to read ''section 13'' wherever it appears;

b. revising the word ''spill'' to read ''discharge'' in sections 2.3 and 2.4, and the last sentence of section 2.5;

c. revising the word ''Spills'' to read ''Discharges'' in the heading of section 2.5;

d. revising the word ''spill'' to read ''discharge'' in paragraph 5 of Attachment C–II;

e. revising the word ''spilled'' to read ''discharged'' in section 1.1 of Attachment C–III;

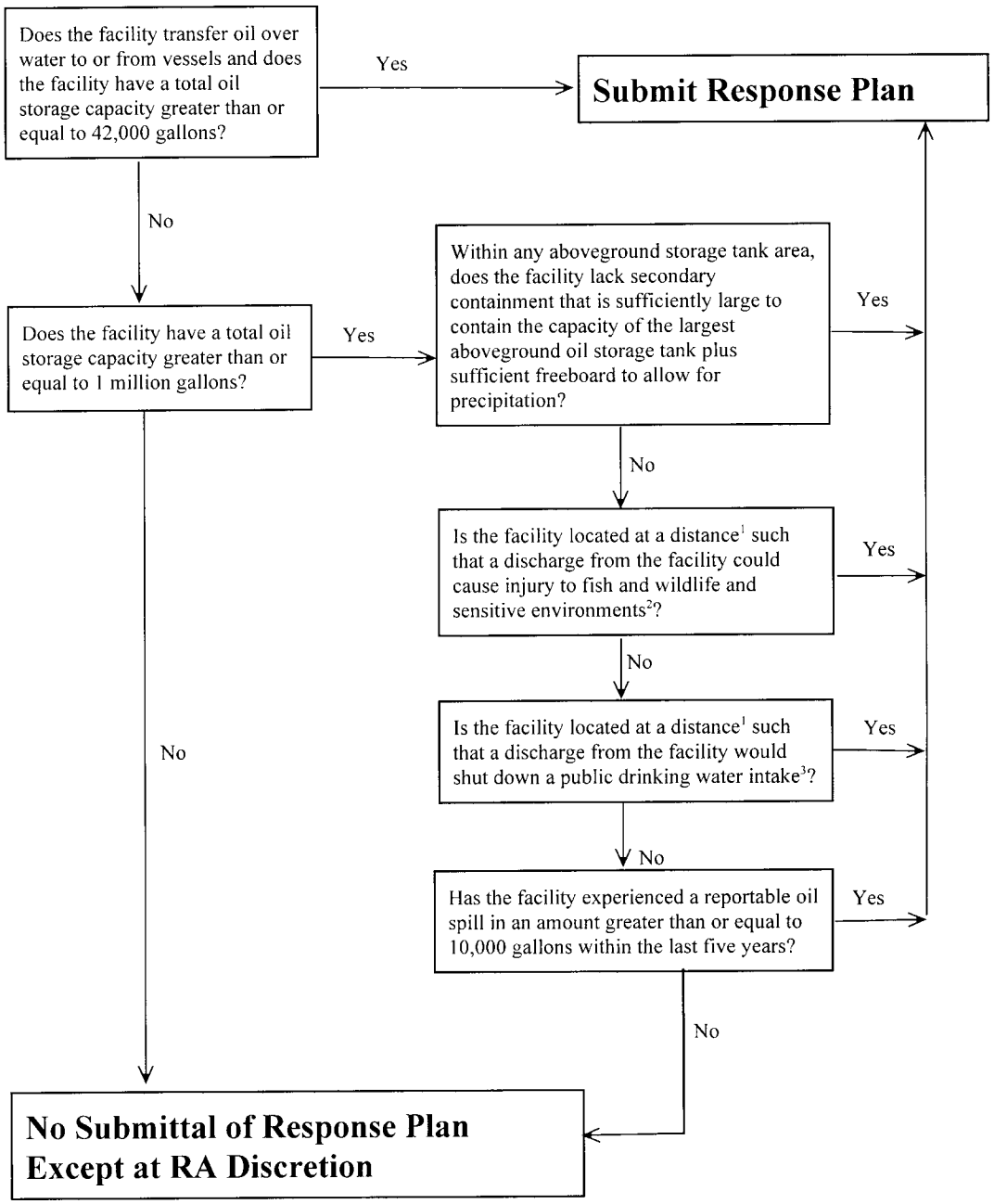
f. revising the word ''spill'' to read ''discharge'' in section 3.2(1) of Attachment C–III; and

g. revising Attachment C–I to read as follows:

BILLING CODE 6560–50–P

Attachment C-I

Flowchart of Criteria for Substantial Harm



[1] Calculated using the appropriate formula in Attachment C-III to this appendix or a comparable formula.

[2] For further description of fish and wildlife and sensitive environments, see Appendices I,II, and III to DOC/NOAA's "Guidance for Facility and vessel response Plans: Fish and Wildlife and Sensitive Environments" (59 FR 14713, March 29, 1994) and the applicable Area Contingency Plan.

[3] Public drinking water intakes are analogous to public water systems as described at CFR 143.2(c).

Appendix D to Part 112—[Amended]

6. Amend Appendix D to part 112 by revising the phrase ''section 10'' to read ''section 13'' in the second sentence of section 1.4, and by revising the word ''spill'' to read ''discharge'' in section 2.2.3 of Attachment D–1.

7. Amend Appendix E to Part 112 as follows:

a. Revising section 1.0 and sections 1.2.1 through 1.2.8 and adding sections 1.2.9 and 1.2.10;

b. Revising sections 2.0, 2.3.1, and 2.6;

c. Revising sections 3.0, 3.2, 3.3, 3.3.1, and 3.3.3 and adding sections 3.2.1 and 3.2.2;

d. Revising sections 4.0, 4.2, and 4.4 through 4.7 and adding sections 4.2.1 and 4.2.2;

e. Revising sections 5.0, 5.1, 5.3, 5.5, 5.7, and 5.8;

f. Revising sections 6.0, 6.3, and 6.3.1;

g. Revising sections 7.0, 7.1, 7.2, 7.2.1, 7.4, 7.5.2, 7.6.3, 7.7, 7.7.1, 7.7.2, 7.7.3, and 7.7.5;

h. Revising sections 8.0, 8.1 and 8.2 and adding sections 8.2.1, 8.3, 8.3.1, 8.3.2, and 8.3.3;

i. Revising sections 9.0, 9.1, 9.2 and 9.3 and adding sections 9.2.1 and 9.4 through 9.7;

j. Revising sections 10.0, 10.1, 10.2, and 10.3;

k. Adding sections 10.2.1 through 10.2.4, sections 10.3.1 through 10.3.3, and section 10.4;

l. Adding sections 10.5 and 10.5.1 through 10.5.5;

m. Adding sections 10.6 and 10.6.1 through 10.6.3;

n. Adding sections 10.7 and 10.7.1 through 10.7.5;

o. Adding sections 11.0 through 11.2;

p. Adding sections 12.0 through 12.3; and

q. Adding sections 13.0 through 13.3.

The revisions and additions read as follows:

Appendix E to Part 112—Determination and Evaluation of Required Response Resources for Facility Response Plans

1.0 Purpose and Definitions

* * * * *

1.2 Definitions.

1.2.1 *Animal fat* means a non-petroleum oil, fat, or grease of animal, fish, or marine mammal origin. Animal fats are further classified based on specific gravity as follows:

(1) Group A—specific gravity less than 0.8.

(2) Group B—specific gravity equal to or greater than 0.8 and less than 1.0.

(3) Group C—specific gravity equal to or greater than 1.0.

1.2.2 *Nearshore* is an operating area defined as extending seaward 12 miles from the boundary lines defined in 46 CFR part 7, except in the Gulf of Mexico. In the Gulf of Mexico, it means the area extending 12 miles from the line of demarcation (COLREG lines) defined in 49 CFR 80.740 and 80.850.

1.2.3 *Non-persistent oils* or *Group 1 oils* include:

(1) A petroleum-based oil that, at the time of shipment, consists of hydrocarbon fractions:

(A) At least 50 percent of which by volume, distill at a temperature of 340 degrees C (645 degrees F); and

(B) At least 95 percent of which by volume, distill at a temperature of 370 degrees C (700 degrees F); and

(2) A non-petroleum oil, other than an animal fat or vegetable oil, with a specific gravity less than 0.8.

1.2.4 *Non-petroleum oil* means oil of any kind that is not petroleum-based, including but not limited to: fats, oils, and greases of animal, fish, or marine mammal origin; and vegetable oils, including oils from seeds, nuts, fruits, and kernels.

1.2.5 *Ocean* means the nearshore area.

1.2.6 *Operating area* means Rivers and Canals, Inland, Nearshore, and Great Lakes geographic location(s) in which a facility is handling, storing, or transporting oil.

1.2.7 *Operating environment* means Rivers and Canals, Inland, Great Lakes, or Ocean. These terms are used to define the conditions in which response equipment is designed to function.

1.2.8 *Persistent oils* include:

(1) A petroleum-based oil that does not meet the distillation criteria for a non-persistent oil. Persistent oils are further classified based on specific gravity as follows:

(A) Group 2—specific gravity less than 0.85;

(B) Group 3—specific gravity equal to or greater than 0.85 and less than 0.95;

(C) Group 4—specific gravity equal to or greater than 0.95 and less than 1.0; or

(D) Group 5—specific gravity equal to or greater than 1.0.

(2) A non-petroleum oil, other than an animal fat or vegetable oil, with a specific gravity of 0.8 or greater. These oils are further classified based on specific gravity as follows:

(A) Group 2—specific gravity equal to or greater than 0.8 and less than 0.85;

(B) Group 3—specific gravity equal to or greater than 0.85 and less than 0.95;

(C) Group 4—specific gravity equal to or greater than 0.95 and less than 1.0; or

(D) Group 5—specific gravity equal to or greater than 1.0.

1.2.9 *Vegetable oil* means a non-petroleum oil or fat of vegetable origin, including but not limited to oils and fats derived from plant seeds, nuts, fruits, and kernels. Vegetable oils are further classified based on specific gravity as follows:

(1) Group A—specific gravity less than 0.8.

(2) Group B—specific gravity equal to or greater than 0.8 and less than 1.0.

(3) Group C—specific gravity equal to or greater than 1.0.

1.2.10 Other definitions are included in § 112.2, section 1.1 of Appendix C, and section 3.0 of Appendix F.

2.0 Equipment Operability and Readiness

* * * * *

2.3.1 The Regional Administrator may require documentation that the boom identified in a facility response plan meets the criteria in Table 1 of this appendix. Absent acceptable documentation, the Regional Administrator may require that the boom be tested to demonstrate that it meets the criteria in Table 1 of this appendix. Testing must be in accordance with ASTM F 715, ASTM F 989, or other tests approved by EPA as deemed appropriate (see Appendix E to this part, section 13, for general availability of documents).

* * * * *

2.6 This appendix provides information on response resource mobilization and response times. The distance of the facility from the storage location of the response resources must be used to determine whether the resources can arrive on-scene within the stated time. A facility owner or operator shall include the time for notification, mobilization, and travel of resources identified to meet the medium and Tier 1 worst case discharge requirements identified in sections 4.3 and 9.3 of this appendix (for medium discharges) and section 5.3 of this appendix (for worst case discharges). The facility owner or operator must plan for notification and mobilization of Tier 2 and 3 response resources as necessary to meet the requirements for arrival on-scene in accordance with section 5.3 of this appendix. An on-water speed of 5 knots and a land speed of 35 miles per hour is assumed, unless the facility owner or operator can demonstrate otherwise.

* * * * *

3.0 Determining Response Resources Required for Small Discharges—Petroleum oils and non-petroleum oils other than animal fats and vegetable oils

* * * * *

3.2 Complexes that are regulated by EPA and the United States Coast Guard (USCG) must also consider planning quantities for the transportation-related transfer portion of the facility.

3.2.1 *Petroleum oils.* The USCG planning level that corresponds to EPA's ''small discharge'' is termed ''the average most probable discharge.'' A USCG rule found at 33 CFR 154.1020 defines ''the average most probable discharge'' as the lesser of 50 barrels (2,100 gallons) or 1 percent of the volume of the worst case discharge. Owners or operators of complexes that handle, store, or transport petroleum oils must compare oil discharge volumes for a small discharge and an average most probable discharge, and plan for whichever quantity is greater.

3.2.2 *Non-petroleum oils other than animal fats and vegetable oils.* Owners or operators of complexes that handle, store, or transport non-petroleum oils other than animal fats and vegetable oils must plan for oil discharge volumes for a small discharge. There is no USCG planning level that directly corresponds to EPA's ''small discharge.'' However, the USCG (at 33 CFR 154.545) has requirements to identify equipment to contain oil resulting from an operational discharge.

3.3 The response resources shall, as appropriate, include:

3.3.1 One thousand feet of containment boom (or, for complexes with marine transfer components, 1,000 feet of containment boom or two times the length of the largest vessel that regularly conducts oil transfers to or from the facility, whichever is greater), and a means of deploying it within 1 hour of the discovery of a discharge;

* * * * *

3.3.3 Oil storage capacity for recovered oily material indicated in section 12.2 of this appendix.

4.0 Determining Response Resources Required for Medium Discharges—Petroleum oils and non-petroleum oils other than animal fats and vegetable oils

* * * * *

4.2 Complexes that are regulated by EPA and the USCG must also consider planning quantities for the transportation-related transfer portion of the facility.

4.2.1 *Petroleum oils.* The USCG planning level that corresponds to EPA's ''medium discharge'' is termed ''the maximum most probable discharge.'' The USCG rule found at 33 CFR part 154 defines ''the maximum most probable discharge'' as a discharge of 1,200 barrels (50,400 gallons) or 10 percent of the worst case discharge, whichever is less. Owners or operators of complexes that handle, store, or transport petroleum oils must compare calculated discharge volumes for a medium discharge and a maximum most probable discharge, and plan for whichever quantity is greater.

4.2.2 *Non-petroleum oils other than animal fats and vegetable oils.* Owners or operators of complexes that handle, store, or transport non-petroleum oils other than animal fats and vegetable oils must plan for oil discharge volumes for a medium discharge. For non-petroleum oils, there is no USCG planning level that directly corresponds to EPA's ''medium discharge.''

* * * * *

4.4 Because rapid control, containment, and removal of oil are critical to reduce discharge impact, the owner or operator must determine response resources using an effective daily recovery capacity for oil recovery devices equal to 50 percent of the planning volume applicable for the facility as determined in section 4.1 of this appendix. The effective daily recovery capacity for oil recovery devices identified in the plan must be determined using the criteria in section 6 of this appendix.

4.5 In addition to oil recovery capacity, the plan shall, as appropriate, identify sufficient quantity of containment boom available, by contract or other approved means as described in § 112.2, to arrive within the required response times for oil collection and containment and for protection of fish and wildlife and sensitive environments. For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's ''Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments'' (see Appendix E to this part, section 13, for availability) and the applicable ACP. Although 40 CFR part 112 does not set required quantities of boom for oil collection and containment, the response plan shall identify and ensure, by contract or other approved means as described in § 112.2, the availability of the quantity of boom identified in the plan for this purpose.

4.6 The plan must indicate the availability of temporary storage capacity to meet section 12.2 of this appendix. If available storage capacity is insufficient to meet this level, then the effective daily recovery capacity must be derated (downgraded) to the limits of the available storage capacity.

4.7 The following is an example of a medium discharge volume planning calculation for equipment identification in a higher volume port area: The facility's largest aboveground storage tank volume is 840,000 gallons. Ten percent of this capacity is 84,000 gallons. Because 10 percent of the facility's largest tank, or 84,000 gallons, is greater than 36,000 gallons, 36,000 gallons is used as the planning volume. The effective daily recovery capacity is 50 percent of the planning volume, or 18,000 gallons per day. The ability of oil recovery devices to meet this capacity must be calculated using the procedures in section 6 of this appendix. Temporary storage capacity available on-scene must equal twice the daily recovery capacity as indicated in section 12.2 of this appendix, or 36,000 gallons per day. This is the information the facility owner or operator must use to identify and ensure the availability of the required response resources, by contract or other approved means as described in § 112.2. The facility owner shall also identify how much boom is available for use.

5.0 Determining Response Resources Required for the Worst Case Discharge to the Maximum Extent Practicable

5.1 A facility owner or operator shall identify and ensure the availability of, by contract or other approved means as described in § 112.2, sufficient response resources to respond to the worst case discharge of oil to the maximum extent practicable. Sections 7 and 10 of this appendix describe the method to determine the necessary response resources. Worksheets are provided as Attachments E–1 and E–2 at the end of this appendix to simplify the procedures involved in calculating the planning volume for response resources for the worst case discharge.

* * * * *

5.3 Oil discharge response resources identified in the response plan and available, by contract or other approved means as described in § 112.2, to meet the applicable worst case discharge planning volume must be located such that they are capable of arriving at the scene of a discharge within the times specified for the applicable response tier listed as follows

	Tier 1 (in hours)	Tier 2 (in hours)	Tier 3 (in hours)
Higher volume port areas	6	30	54
Great Lakes	12	36	60
All other river and canal, inland, and nearshore areas	12	36	60

The three levels of response tiers apply to the amount of time in which facility owners or operators must plan for response resources to arrive at the scene of a discharge to respond to the worst case discharge planning volume. For example, at a worst case discharge in an inland area, the first tier of response resources (*i.e.,* that amount of on-water and shoreline cleanup capacity necessary to respond to the fraction of the worst case discharge as indicated through the series of steps described in sections 7.2 and 7.3 or sections 10.2 and 10.3 of this appendix) would arrive at the scene of the discharge within 12 hours; the second tier of response resources would arrive within 36 hours; and the third tier of response resources would arrive within 60 hours.

* * * * *

5.5 A facility owner or operator shall identify the availability of temporary storage capacity to meet section 12.2 of this appendix. If available storage capacity is insufficient, then the effective daily recovery capacity must be derated (downgraded) to the limits of the available storage capacity.

* * * * *

5.7 In addition to oil spill recovery devices, a facility owner or operator shall identify sufficient quantities of boom that are available, by contract or other approved means as described in § 112.2, to arrive on-scene within the specified response times for oil containment and collection. The specific quantity of boom required for collection and containment will depend on the facility-specific information and response strategies employed. A facility owner or operator shall, as appropriate, also identify sufficient quantities of oil containment boom to protect fish and wildlife and sensitive environments. For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's ''Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments'' (see Appendix E to this part, section 13, for availability), and the applicable ACP. Refer to this guidance document for the number of days and geographic areas (*i.e.,* operating

environments) specified in Table 2 and Table 6 of this appendix.

5.8 A facility owner or operator shall also identify, by contract or other approved means as described in § 112.2, the availability of an oil spill removal organization(s) (as described in § 112.2) capable of responding to a shoreline cleanup operation involving the calculated volume of oil and emulsified oil that might impact the affected shoreline. The volume of oil that shall, as appropriate, be planned for is calculated through the application of factors contained in Tables 2, 3, 6, and 7 of this appendix. The volume calculated from these tables is intended to assist the facility owner or operator to identify an oil spill removal organization with sufficient resources and expertise.

6.0 Determining Effective Daily Recovery Capacity for Oil Recovery Devices

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6.3 As an alternative to section 6.2 of this appendix, a facility owner or operator may submit adequate evidence that a different effective daily recovery capacity should be applied for a specific oil recovery device. Adequate evidence is actual verified performance data in discharge conditions or tests using American Society of Testing and Materials (ASTM) Standard F 631–99, F 808–83 (1999), or an equivalent test approved by EPA as deemed appropriate (see Appendix E to this part, section 13, for general availability of documents).

6.3.1 The following formula must be used to calculate the effective daily recovery capacity under this alternative:

$R = D \times U$

where:

R—Effective daily recovery capacity;

D—Average Oil Recovery Rate in barrels per hour (Item 26 in F 808–83; Item 13.2.16 in F 631–99; or actual performance data); and

U—Hours per day that equipment can operate under discharge conditions. Ten hours per day must be used unless a facility owner or operator can demonstrate that the recovery operation can be sustained for longer periods.

* * * * *

7.0 Calculating Planning Volumes for a Worst Case Discharge—Petroleum Oils and Non-Petroleum Oils Other Than Animal Fats and Vegetable Oils

7.1 A facility owner or operator shall plan for a response to the facility's worst case discharge. The planning for on-water oil recovery must take into account a loss of some oil to the environment due to evaporative and natural dissipation, potential increases in volume due to emulsification, and the potential for deposition of oil on the shoreline. The procedures for non-petroleum oils other than animal fats and vegetable oils are discussed in section 7.7 of this appendix.

7.2 The following procedures must be used by a facility owner or operator in determining the required on-water oil recovery capacity:

7.2.1 The following must be determined: the worst case discharge volume of oil in the facility; the appropriate group(s) for the types of oil handled, stored, or transported at the facility [persistent (Groups 2, 3, 4, 5) or non-persistent (Group 1)]; and the facility's specific operating area. See sections 1.2.3 and 1.2.8 of this appendix for the definitions of non-persistent and persistent oils, respectively. Facilities that handle, store, or transport oil from different oil groups must calculate each group separately, unless the oil group constitutes 10 percent or less by volume of the facility's total oil storage capacity. This information is to be used with Table 2 of this appendix to determine the percentages of the total volume to be used for removal capacity planning. Table 2 of this appendix divides the volume into three categories: oil lost to the environment; oil deposited on the shoreline; and oil available for on-water recovery.

* * * * *

7.4 A response plan must identify response resources with fire fighting capability. The owner or operator of a facility that handles, stores, or transports Group 1 through Group 4 oils that does not have adequate fire fighting resources located at the facility or that cannot rely on sufficient local fire fighting resources must identify adequate fire fighting resources. The facility owner or operator shall ensure, by contract or other approved means as described in § 112.2, the availability of these resources. The response plan must also identify an individual located at the facility to work with the fire department for Group 1 through Group 4 oil fires. This individual shall also verify that sufficient well-trained fire fighting resources are available within a reasonable response time to a worst case scenario. The individual may be the qualified individual identified in the response plan or another appropriate individual located at the facility.

* * * * *

7.5.2 Because the requirements for Tiers 1, 2, and 3 for inland and nearshore exceed the caps identified in Table 5 of this appendix, the facility owner will contract for a response to 10,000 barrels per day (bpd) for Tier 1, 20,000 bpd for Tier 2, and 40,000 bpd for Tier 3. Resources for the remaining 7,850 bpd for Tier 1, 9,750 bpd for Tier 2, and 7,600 bpd for Tier 3 shall be identified but need not be contracted for in advance. The facility owner or operator shall, as appropriate, also identify or contract for quantities of boom identified in their response plan for the protection of fish and wildlife and sensitive environments within the area potentially impacted by a worst case discharge from the facility. For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's ''Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments,'' (see Appendix E to this part, section 13, for availability) and the applicable ACP. Attachment C–III to Appendix C provides a method for calculating a planning distance to fish and wildlife and sensitive environments and public drinking water intakes that may be impacted in the event of a worst case discharge.

* * * * *

7.6.3 A response plan must identify response resources with fire fighting capability. The owner or operator of a facility that handles, stores, or transports Group 5 oils that does not have adequate fire fighting resources located at the facility or that cannot rely on sufficient local fire fighting resources must identify adequate fire fighting resources. The facility owner or operator shall ensure, by contract or other approved means as described in § 112.2, the availability of these resources. The response plan shall also identify an individual located at the facility to work with the fire department for Group 5 oil fires. This individual shall also verify that sufficient well-trained fire fighting resources are available within a reasonable response time to respond to a worst case discharge. The individual may be the qualified individual identified in the response plan or another appropriate individual located at the facility.

7.7 *Non-petroleum oils other than animal fats and vegetable oils.* The procedures described in sections 7.7.1 through 7.7.5 of this appendix must be used to determine appropriate response plan development and evaluation criteria for facilities that handle, store, or transport non-petroleum oils other than animal fats and vegetable oils. Refer to section 11 of this appendix for information on the limitations on the use of chemical agents for inland and near shore areas.

7.7.1 An owner or operator of a facility that handles, stores, or transports non-petroleum oils other than animal fats and vegetable oils must provide information in his or her plan that identifies:

(1) Procedures and strategies for responding to a worst case discharge to the maximum extent practicable; and

(2) Sources of the equipment and supplies necessary to locate, recover, and mitigate such a discharge.

7.7.2 An owner or operator of a facility that handles, stores, or transports non-petroleum oils other than animal fats and vegetable oils must ensure that any equipment identified in a response plan is capable of operating in the conditions expected in the geographic area(s) (*i.e.,* operating environments) in which the facility operates using the criteria in Table 1 of this appendix. When evaluating the operability of equipment, the facility owner or operator must consider limitations that are identified in the appropriate ACPs, including:

(1) Ice conditions;

(2) Debris;

(3) Temperature ranges; and

(4) Weather-related visibility.

7.7.3 The owner or operator of a facility that handles, stores, or transports non-petroleum oils other than animal fats and vegetable oils must identify the response resources that are available by contract or other approved means, as described in § 112.2. The equipment described in the response plan shall, as appropriate, include:

(1) Containment boom, sorbent boom, or other methods for containing oil floating on the surface or to protect shorelines from impact;

(2) Oil recovery devices appropriate for the type of non-petroleum oil carried; and

(3) Other appropriate equipment necessary to respond to a discharge involving the type of oil carried.

* * * * *

7.7.5 A response plan must identify response resources with fire fighting capability. The owner or operator of a facility that handles, stores, or transports non-petroleum oils other than animal fats and vegetable oils that does not have adequate fire fighting resources located at the facility or that cannot rely on sufficient local fire fighting resources must identify adequate fire fighting resources. The owner or operator shall ensure, by contract or other approved means as described in § 112.2, the availability of these resources. The response plan must also identify an individual located at the facility to work with the fire department for fires of these oils. This individual shall also verify that sufficient well-trained fire fighting resources are available within a reasonable response time to a worst case scenario. The individual may be the qualified individual identified in the response plan or another appropriate individual located at the facility.

8.0 Determining Response Resources Required for Small Discharges—Animal Fats and Vegetable Oils

8.1 A facility owner or operator shall identify sufficient response resources available, by contract or other approved means as described in § 112.2, to respond to a small discharge of animal fats or vegetable oils. A small discharge is defined as any discharge volume less than or equal to 2,100 gallons, but not to exceed the calculated worst case discharge. The equipment must be designed to function in the operating environment at the point of expected use.

8.2 Complexes that are regulated by EPA and the USCG must also consider planning quantities for the marine transportation-related portion of the facility.

8.2.1 The USCG planning level that corresponds to EPA's ''small discharge'' is termed ''the average most probable discharge.'' A USCG rule found at 33 CFR 154.1020 defines ''the average most probable discharge'' as the lesser of 50 barrels (2,100 gallons) or 1 percent of the volume of the worst case discharge. Owners or operators of complexes that handle, store, or transport petroleum oils must compare oil discharge volumes for a small discharge and an average most probable discharge, and plan for whichever quantity is greater.

8.3 The response resources shall, as appropriate, include:

8.3.1 One thousand feet of containment boom (or, for complexes with marine transfer components, 1,000 feet of containment boom or two times the length of the largest vessel that regularly conducts oil transfers to or from the facility, whichever is greater), and a means of deploying it within 1 hour of the discovery of a discharge;

8.3.2 Oil recovery devices with an effective daily recovery capacity equal to the amount of oil discharged in a small discharge or greater which is available at the facility within 2 hours of the detection of a discharge; and

8.3.3 Oil storage capacity for recovered oily material indicated in section 12.2 of this appendix.

9.0 Determining Response Resources Required for Medium Discharges—Animal Fats and Vegetable Oils

9.1 A facility owner or operator shall identify sufficient response resources available, by contract or other approved means as described in § 112.2, to respond to a medium discharge of animal fats or vegetable oils for that facility. This will require response resources capable of containing and collecting up to 36,000 gallons of oil or 10 percent of the worst case discharge, whichever is less. All equipment identified must be designed to operate in the applicable operating environment specified in Table 1 of this appendix.

9.2 Complexes that are regulated by EPA and the USCG must also consider planning quantities for the transportation-related transfer portion of the facility. The USCG planning level that corresponds to EPA's ''medium discharge'' is termed ''the maximum most probable discharge.'' The USCG revisions to 33 CFR part 154 define ''the maximum most probable discharge'' as a discharge of 1,200 barrels (50,400 gallons) or 10 percent of the worst case discharge, whichever is less. Owners or operators of complexes must compare calculated discharge volumes for a medium discharge and a maximum most probable discharge, and plan for whichever quantity is greater.

9.2.1 Owners or operators of complexes that handle, store, or transport animal fats or vegetable oils must plan for oil discharge volumes for a medium discharge. For non-petroleum oils, there is no USCG planning level that directly corresponds to EPA's ''medium discharge.'' Although the USCG does not have planning requirements for medium discharges, they do have requirements (at 33 CFR 154.545) to identify equipment to contain oil resulting from an operational discharge.

9.3 Oil recovery devices identified to meet the applicable medium discharge volume planning criteria must be located such that they are capable of arriving on-scene within 6 hours in higher volume port areas and the Great Lakes and within 12 hours in all other areas. Higher volume port areas and Great Lakes areas are defined in section 1.1 of Appendix C to this part.

9.4 Because rapid control, containment, and removal of oil are critical to reduce discharge impact, the owner or operator must determine response resources using an effective daily recovery capacity for oil recovery devices equal to 50 percent of the planning volume applicable for the facility as determined in section 9.1 of this appendix. The effective daily recovery capacity for oil recovery devices identified in the plan must be determined using the criteria in section 6 of this appendix.

9.5 In addition to oil recovery capacity, the plan shall, as appropriate, identify sufficient quantity of containment boom available, by contract or other approved means as described in § 112.2, to arrive within the required response times for oil collection and containment and for protection of fish and wildlife and sensitive environments. For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's ''Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments'' (59 FR 14713–22, March 29, 1994) and the applicable ACP. Although 40 CFR part 112 does not set required quantities of boom for oil collection and containment, the response plan shall identify and ensure, by contract or other approved means as described in § 112.2, the availability of the quantity of boom identified in the plan for this purpose.

9.6 The plan must indicate the availability of temporary storage capacity to meet section 12.2 of this appendix. If available storage capacity is insufficient to meet this level, then the effective daily recovery capacity must be derated (downgraded) to the limits of the available storage capacity.

9.7 The following is an example of a medium discharge volume planning calculation for equipment identification in a higher volume port area:

The facility's largest aboveground storage tank volume is 840,000 gallons. Ten percent of this capacity is 84,000 gallons. Because 10 percent of the facility's largest tank, or 84,000 gallons, is greater than 36,000 gallons, 36,000 gallons is used as the planning volume. The effective daily recovery capacity is 50 percent of the planning volume, or 18,000 gallons per day. The ability of oil recovery devices to meet this capacity must be calculated using the procedures in section 6 of this appendix. Temporary storage capacity available on-scene must equal twice the daily recovery capacity as indicated in section 12.2 of this appendix, or 36,000 gallons per day. This is the information the facility owner or operator must use to identify and ensure the availability of the required response resources, by contract or other approved means as described in § 112.2. The facility owner shall also identify how much boom is available for use.

10.0 Calculating Planning Volumes for a Worst Case Discharge—Animal Fats and Vegetable Oils.

10.1 A facility owner or operator shall plan for a response to the facility's worst case discharge. The planning for on-water oil recovery must take into account a loss of some oil to the environment due to physical, chemical, and biological processes, potential increases in volume due to emulsification, and the potential for deposition of oil on the shoreline or on sediments. The response planning procedures for animal fats and vegetable oils are discussed in section 10.7 of this appendix. You may use alternate response planning procedures for animal fats and vegetable oils if those procedures result in environmental protection equivalent to that provided by the procedures in section 10.7 of this appendix.

10.2 The following procedures must be used by a facility owner or operator in determining the required on-water oil recovery capacity:

10.2.1 The following must be determined: the worst case discharge volume of oil in the facility; the appropriate group(s) for the types of oil handled, stored, or transported at the facility (Groups A, B, C); and the facility's specific operating area. See sections 1.2.1 and

1.2.9 of this appendix for the definitions of animal fats and vegetable oils and groups thereof. Facilities that handle, store, or transport oil from different oil groups must calculate each group separately, unless the oil group constitutes 10 percent or less by volume of the facility's total oil storage capacity. This information is to be used with Table 6 of this appendix to determine the percentages of the total volume to be used for removal capacity planning. Table 6 of this appendix divides the volume into three categories: oil lost to the environment; oil deposited on the shoreline; and oil available for on-water recovery.

10.2.2 The on-water oil recovery volume shall, as appropriate, be adjusted using the appropriate emulsification factor found in Table 7 of this appendix. Facilities that handle, store, or transport oil from different groups must compare the on-water recovery volume for each oil group (unless the oil group constitutes 10 percent or less by volume of the facility's total storage capacity) and use the calculation that results in the largest on-water oil recovery volume to plan for the amount of response resources for a worst case discharge.

10.2.3 The adjusted volume is multiplied by the on-water oil recovery resource mobilization factor found in Table 4 of this appendix from the appropriate operating area and response tier to determine the total on-water oil recovery capacity in barrels per day that must be identified or contracted to arrive on-scene within the applicable time for each response tier. Three tiers are specified. For higher volume port areas, the contracted tiers of resources must be located such that they are capable of arriving on-scene within 6 hours for Tier 1, 30 hours for Tier 2, and 54 hours for Tier 3 of the discovery of a discharge. For all other rivers and canals, inland, near shore areas, and the Great Lakes, these tiers are 12, 36, and 60 hours.

10.2.4 The resulting on-water oil recovery capacity in barrels per day for each tier is used to identify response resources necessary to sustain operations in the applicable operating area. The equipment shall be capable of sustaining operations for the time period specified in Table 6 of this appendix. The facility owner or operator shall identify and ensure, by contract or other approved means as described in § 112.2, the availability of sufficient oil spill recovery devices to provide the effective daily oil recovery capacity required. If the required capacity exceeds the applicable cap specified in Table 5 of this appendix, then a facility owner or operator shall ensure, by contract or other approved means as described in § 112.2, only for the quantity of resources required to meet the cap, but shall identify sources of additional resources as indicated in section 5.4 of this appendix. The owner or operator of a facility whose planning volume exceeded the cap in 1998 must make arrangements to identify and ensure, by contract or other approved means as described in § 112.2, the availability of additional capacity to be under contract by 2003, as appropriate. For a facility that handles multiple groups of oil, the required effective daily recovery capacity for each oil group is calculated before applying the cap. The oil group calculation resulting in the largest on-water recovery volume must be used to plan for the amount of response resources for a worst case discharge, unless the oil group comprises 10 percent or less by volume of the facility's oil storage capacity.

10.3 The procedures discussed in sections 10.3.1 through 10.3.3 of this appendix must be used to calculate the planning volume for identifying shoreline cleanup capacity (for Groups A and B oils).

10.3.1 The following must be determined: the worst case discharge volume of oil for the facility; the appropriate group(s) for the types of oil handled, stored, or transported at the facility (Groups A or B); and the geographic area(s) in which the facility operates (i.e., operating areas). For a facility handling, storing, or transporting oil from different groups, each group must be calculated separately. Using this information, Table 6 of this appendix must be used to determine the percentages of the total volume to be used for shoreline cleanup resource planning.

10.3.2 The shoreline cleanup planning volume must be adjusted to reflect an emulsification factor using the same procedure as described in section 10.2.2 of this appendix.

10.3.3 The resulting volume shall be used to identify an oil spill removal organization with the appropriate shoreline cleanup capability.

10.4 A response plan must identify response resources with fire fighting capability appropriate for the risk of fire and explosion at the facility from the discharge or threat of discharge of oil. The owner or operator of a facility that handles, stores, or transports Group A or B oils that does not have adequate fire fighting resources located at the facility or that cannot rely on sufficient local fire fighting resources must identify adequate fire fighting resources. The facility owner or operator shall ensure, by contract or other approved means as described in § 112.2, the availability of these resources. The response plan must also identify an individual to work with the fire department for Group A or B oil fires. This individual shall also verify that sufficient well-trained fire fighting resources are available within a reasonable response time to a worst case scenario. The individual may be the qualified individual identified in the response plan or another appropriate individual located at the facility.

10.5 The following is an example of the procedure described in sections 10.2 and 10.3 of this appendix. A facility with a 37.04 million gallon (881,904 barrel) capacity of several types of vegetable oils is located in the Inland Operating Area. The vegetable oil with the highest specific gravity stored at the facility is soybean oil (specific gravity 0.922, Group B vegetable oil). The facility has ten aboveground oil storage tanks with a combined total capacity of 18 million gallons (428,571 barrels) and without secondary containment. The remaining facility tanks are inside secondary containment structures. The largest aboveground oil storage tank (3 million gallons or 71,428 barrels) has its own secondary containment. Two 2.1 million gallon (50,000 barrel) tanks (that are not connected by a manifold) are within a common secondary containment tank area, which is capable of holding 4.2 million gallons (100,000 barrels) plus sufficient freeboard.

10.5.1 The worst case discharge for the facility is calculated by adding the capacity of all aboveground vegetable oil storage tanks without secondary containment (18.0 million gallons) plus the capacity of the largest aboveground storage tank inside secondary containment (3.0 million gallons). The resulting worst case discharge is 21 million gallons or 500,000 barrels.

10.5.2 With a specific worst case discharge identified, the planning volume for on-water recovery can be identified as follows:

Worst case discharge: 21 million gallons (500,000 barrels) of Group B vegetable oil

Operating Area: Inland

Planned percent recovered floating vegetable oil (from Table 6, column Near shore/Inland/Great Lakes): Inland, Group B is 20%

Emulsion factor (from Table 7): 2.0 Planning volumes for on-water recovery:

21,000,000 gallons × .2 × 2.0 = 8,400,000 gallons or 200,000 barrels.

Determine required resources for on-water recovery for each of the three tiers using mobilization factors (from Table 4, column Inland/Near shore/Great Lakes).

Inland operating area	Tier 1	Tier 2	Tier 3
Planning volume on water	.15	.25	.40
Estimated Daily Recovery Capacity (bbls)	30,000	50,000	80,000

10.5.3 Because the requirements for On-Water Recovery Resources for Tiers 1, 2, and 3 for Inland Operating Area exceed the caps identified in Table 5 of this appendix, the facility owner will contract for a response of 12,500 barrels per day (bpd) for Tier 1, 25,000 bpd for Tier 2, and 50,000 bpd for Tier 3. Resources for the remaining 17,500 bpd for Tier 1, 25,000 bpd for Tier 2, and 30,000 bpd for Tier 3 shall be identified but need not be contracted for in advance.

10.5.4 With the specific worst case discharge identified, the planning volume of onshore recovery can be identified as follows:

Worst case discharge: 21 million gallons (500,000 barrels) of Group B vegetable oil

Operating Area: Inland
Planned percent recovered floating vegetable oil from onshore (from Table 6, column Near shore/Inland/Great Lakes): Inland, Group B is 65%
Emulsion factor (from Table 7): 2.0
Planning volumes for shoreline recovery:
21,000,000 gallons × 0.65 × 2.0 = 27,300,000 gallons or 650,000 barrels

10.5.5 The facility owner or operator shall, as appropriate, also identify or contract for quantities of boom identified in the response plan for the protection of fish and wildlife and sensitive environments within the area potentially impacted by a worst case discharge from the facility. For further description of fish and wildlife and sensitive environments, see Appendices I, II, and III to DOC/NOAA's ''Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments,'' (see Appendix E to this part, section 13, for availability) and the applicable ACP. Attachment C–III to Appendix C provides a method for calculating a planning distance to fish and wildlife and sensitive environments and public drinking water intakes that may be adversely affected in the event of a worst case discharge.

10.6 The procedures discussed in sections 10.6.1 through 10.6.3 of this appendix must be used to determine appropriate response resources for facilities with Group C oils.

10.6.1 The owner or operator of a facility that handles, stores, or transports Group C oils shall, as appropriate, identify the response resources available by contract or other approved means, as described in § 112.2. The equipment identified in a response plan shall, as appropriate, include:

(1) Sonar, sampling equipment, or other methods for locating the oil on the bottom or suspended in the water column;

(2) Containment boom, sorbent boom, silt curtains, or other methods for containing the oil that may remain floating on the surface or to reduce spreading on the bottom;

(3) Dredges, pumps, or other equipment necessary to recover oil from the bottom and shoreline;

(4) Equipment necessary to assess the impact of such discharges; and

(5) Other appropriate equipment necessary to respond to a discharge involving the type of oil handled, stored, or transported.

10.6.2 Response resources identified in a response plan for a facility that handles, stores, or transports Group C oils under section 10.6.1 of this appendix shall be capable of being deployed on scene within 24 hours of discovery of a discharge.

10.6.3 A response plan must identify response resources with fire fighting capability. The owner or operator of a facility that handles, stores, or transports Group C oils that does not have adequate fire fighting resources located at the facility or that cannot rely on sufficient local fire fighting resources must identify adequate fire fighting resources. The owner or operator shall ensure, by contract or other approved means as described in § 112.2, the availability of these resources. The response plan shall also identify an individual located at the facility to work with the fire department for Group C oil fires. This individual shall also verify that sufficient well-trained fire fighting resources are available within a reasonable response time to respond to a worst case discharge. The individual may be the qualified individual identified in the response plan or another appropriate individual located at the facility.

10.7 The procedures described in sections 10.7.1 through 10.7.5 of this appendix must be used to determine appropriate response plan development and evaluation criteria for facilities that handle, store, or transport animal fats and vegetable oils. Refer to section 11 of this appendix for information on the limitations on the use of chemical agents for inland and near shore areas.

10.7.1 An owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils must provide information in the response plan that identifies:

(1) Procedures and strategies for responding to a worst case discharge of animal fats and vegetable oils to the maximum extent practicable; and

(2) Sources of the equipment and supplies necessary to locate, recover, and mitigate such a discharge.

10.7.2 An owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils must ensure that any equipment identified in a response plan is capable of operating in the geographic area(s) (*i.e.,* operating environments) in which the facility operates using the criteria in Table 1 of this appendix. When evaluating the operability of equipment, the facility owner or operator must consider limitations that are identified in the appropriate ACPs, including:

(1) Ice conditions;

(2) Debris;

(3) Temperature ranges; and

(4) Weather-related visibility.

10.7.3. The owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils must identify the response resources that are available by contract or other approved means, as described in § 112.2. The equipment described in the response plan shall, as appropriate, include:

(1) Containment boom, sorbent boom, or other methods for containing oil floating on the surface or to protect shorelines from impact;

(2) Oil recovery devices appropriate for the type of animal fat or vegetable oil carried; and

(3) Other appropriate equipment necessary to respond to a discharge involving the type of oil carried.

10.7.4 Response resources identified in a response plan according to section 10.7.3 of this appendix must be capable of commencing an effective on-scene response within the applicable tier response times in section 5.3 of this appendix.

10.7.5 A response plan must identify response resources with fire fighting capability. The owner or operator of a facility that handles, stores, or transports animal fats and vegetable oils that does not have adequate fire fighting resources located at the facility or that cannot rely on sufficient local fire fighting resources must identify adequate fire fighting resources. The owner or operator shall ensure, by contract or other approved means as described in § 112.2, the availability of these resources. The response plan shall also identify an individual located at the facility to work with the fire department for animal fat and vegetable oil fires. This individual shall also verify that sufficient well-trained fire fighting resources are available within a reasonable response time to respond to a worst case discharge. The individual may be the qualified individual identified in the response plan or another appropriate individual located at the facility.

11.0 Determining the Availability of Alternative Response Methods

11.1 For chemical agents to be identified in a response plan, they must be on the NCP Product Schedule that is maintained by EPA. (Some States have a list of approved dispersants for use within State waters. Not all of these State-approved dispersants are listed on the NCP Product Schedule.)

11.2 Identification of chemical agents in the plan does not imply that their use will be authorized. Actual authorization will be governed by the provisions of the NCP and the applicable ACP.

12.0 Additional Equipment Necessary to Sustain Response Operations

12.1 A facility owner or operator shall identify sufficient response resources available, by contract or other approved means as described in § 112.2, to respond to a medium discharge of animal fats or vegetables oils for that facility. This will require response resources capable of containing and collecting up to 36,000 gallons of oil or 10 percent of the worst case discharge, whichever is less. All equipment identified must be designed to operate in the applicable operating environment specified in Table 1 of this appendix.

12.2 A facility owner or operator shall evaluate the availability of adequate temporary storage capacity to sustain the effective daily recovery capacities from equipment identified in the plan. Because of the inefficiencies of oil spill recovery devices, response plans must identify daily storage capacity equivalent to twice the effective daily recovery capacity required on-scene. This temporary storage capacity may be reduced if a facility owner or operator can demonstrate by waste stream analysis that the efficiencies of the oil recovery devices, ability to decant waste, or the availability of alternative temporary storage or disposal locations will reduce the overall volume of oily material storage.

12.3 A facility owner or operator shall ensure that response planning includes the capability to arrange for disposal of recovered oil products. Specific disposal procedures will be addressed in the applicable ACP.

13.0 References and Availability

13.1 All materials listed in this section are part of EPA's rulemaking docket and are located in the Superfund Docket, 1235 Jefferson Davis Highway, Crystal Gateway 1, Arlington, Virginia 22202, Suite 105 (Docket Numbers SPCC–2P, SPCC–3P, and SPCC–9P). The docket is available for inspection

between 9 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays.

Appointments to review the docket can be made by calling 703–603–9232. Docket hours are subject to change. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

13.2 The docket will mail copies of materials to requestors who are outside the Washington, DC metropolitan area. Materials may be available from other sources, as noted in this section. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services. The RCRA/Superfund Hotline at 800–424–9346 may also provide additional information on where to obtain documents. To contact the RCRA/Superfund Hotline in the Washington, DC metropolitan area, dial 703–412–9810. The Telecommunications Device for the Deaf (TDD) Hotline number is 800–553–7672, or, in the Washington, DC metropolitan area, 703–412–3323.

13.3 Documents

(1) National Preparedness for Response Exercise Program (PREP). The PREP draft guidelines are available from United States Coast Guard Headquarters (G–MEP–4), 2100 Second Street, SW., Washington, DC 20593. (See 58 FR 53990–91, October 19, 1993, Notice of Availability of PREP Guidelines).

(2) ''Guidance for Facility and Vessel Response Plans: Fish and Wildlife and Sensitive Environments' (published in the Federal Register by DOC/NOAA at 59 FR 14713–22, March 29, 1994.). The guidance is available in the Superfund Docket (see sections 13.1 and 13.2 of this appendix).

(3) ASTM Standards. ASTM F 715, ASTM F 989, ASTM F 631–99, ASTM F 808–83 (1999). The ASTM standards are available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959.

(4) Response Plans for Marine Transportation-Related Facilities, Interim Final Rule. Published by USCG, DOT at 58 FR 7330–76, February 5, 1993.

8. Amend the Tables to Appendix E to Part 112 by revising Table 2 and adding Tables 6 and 7 to read as follows:

TABLE 2 TO APPENDIX E.—REMOVAL CAPACITY PLANNING TABLE FOR PETROLEUM OILS

Spill location	Rivers and canals			Near shore/Inland		
Sustainability of on-water oil recovery	3 days			4 days		
Oil group [1]	Percent natural dissipation	Percent recovered floating Oil	Percent oil onshore	Percent natural dissipation	Percent recovered floating oil	Percent oil onshore
1—Non-persistent oils	80	10	10	80	20	10
2—Light crudes	40	15	45	50	50	30
3—Medium crudes and fuels	20	15	65	30	50	50
4—Heavy crudes and fuels	5	20	75	10	50	70

[1] The response resource considerations for non-petroleum oils other than animal fats and vegetable oils are outlined in section 7.7 of this appendix.

Note: Group 5 oils are defined in section 1.2.8 of this appendix; the response resource considerations are outlined in section 7.6 of this appendix.

* * * * *

TABLE 6 TO APPENDIX E.—REMOVAL CAPACITY PLANNING TABLE FOR ANIMAL FATS AND VEGETABLE OILS

Spill location	Rivers and canals			Near shore/Inland Great Lakes		
Sustainability of on-water oil recovery	3 days			4 days		
Oil group [1]	Percent natural loss	Percent recovered floating oil	Percent recovered oil from onshore	Percent natural loss	Percent recovered floating oil	Percent recovered oil from onshore
Group A	40	15	45	50	20	30
Group B	20	15	65	30	20	50

[1] Substances with a specific gravity greater than 1.0 generally sink below the surface of the water. Response resource considerations are outlined in section 10.6 of this appendix. The owner or operator of the facility is responsible for determining appropriate response resources for Group C oils including locating oil on the bottom or suspended in the water column; containment boom or other appropriate methods for containing oil that may remain floating on the surface; and dredges, pumps, or other equipment to recover animal fats or vegetable oils from the bottom and shoreline.

Note: Group C oils are defined in section 1.2.1 and 1.2.9 of this appendix; the response resource procedures are discussed in section 10.6 of this appendix.

TABLE 7 TO APPENDIX E.—EMULSIFICATION FACTORS FOR ANIMAL FATS AND VEGETABLE OILS

Oil Group [1]:	
Group A	1.0
Group B	2.0

[1] Substances with a specific gravity greater than 1.0 generally sink below the surface of the water. Response resource considerations are outlined in section 10.6 of this appendix. The owner or operator of the facility is responsible for determining appropriate response resources for Group C oils including locating oil on the bottom or suspended in the water column; containment boom or other appropriate methods for containing oil that may remain floating on the surface; and dredges, pumps, or other equipment to recover animal fats or vegetable oils from the bottom and shoreline.

Note: Group C oils are defined in section 1.2.1 and 1.2.9 of this appendix; the response resource procedures are discussed in section 10.6 of this appendix.

9. Amend the attachments to Appendix E by revising Attachment E–1 and Attachment E–1 Example and adding Attachment E–2 and Attachment E–2 Example to read as follows:

BILLING CODE 6560–50–P

Attachment E-1 --
Worksheet to Plan Volume of Response Resources
for Worst Case Discharge - Petroleum Oils

Part I Background Information

Step (A) Calculate Worst Case Discharge in barrels (Appendix D) [ ] (A)

Step (B) Oil Group[1] (Table 3 and section 1.2 of this appendix) . [ ]

Step (C) Operating Area (choose one) . . . . [ ] Near shore/Inland Great Lakes [ ] or Rivers and Canals

Step (D) Percentages of Oil (Table 2 of this appendix)

Percent Lost to Natural Dissipation	Percent Recovered Floating Oil	Percent Oil Onshore
[ ]	[ ]	[ ]
(D1)	(D2)	(D3)

Step (E1) On-Water Oil Recovery $\frac{\text{Step (D2) x Step(A)}}{100}$ [ ] (E1)

Step (E2) Shoreline Recovery $\frac{\text{Step (D3) x Step (A)}}{100}$ . . . . [ ] (E2)

Step (F) Emulsification Factor (Table 3 of this appendix) . . . . . [ ] (F)

Step (G) On-Water Oil Recovery Resource Mobilization Factor (Table 4 of this appendix)

Tier 1	Tier 2	Tier 3
[ ]	[ ]	[ ]
(G1)	(G2)	(G3)

[1] A facility that handles, stores, or transports multiple groups of oil must do separate calculations for each oil group on site except for those oil groups that constitute 10 percent or less by volume of the total oil storage capacity at the facility. For purposes of this calculation, the volumes of all products in an oil group must be summed to determine the percentage of the facility's total oil storage capacity.

Attachment E-1 (continued) --
Worksheet to Plan Volume of Response Resources
for Worst Case Discharge - Petroleum Oils

Part II On-Water Oil Recovery Capacity (barrels/day)

Tier 1	Tier 2	Tier 3
Step (E1) x Step (F) x Step (G1)	Step (E1) x Step (F) x Step (G2)	Step (E1) x Step (F) x Step (G3)

Part III Shoreline Cleanup Volume (barrels) . . . . . .

Step (E2) x Step (F)

Part IV On-Water Response Capacity By Operating Area
(Table 5 of this appendix)
(Amount needed to be contracted for in barrels/day)

Tier 1	Tier 2	Tier 3
(J1)	(J2)	(J3)

Part V On-Water Amount Needed to be Identified, but not Contracted for in Advance (barrels/day)

Tier 1	Tier 2	Tier 3
Part II Tier 1 - Step (J1)	Part II Tier 2 - Step (J2)	Part II Tier 3 - Step (J3)

NOTE: To convert from barrels/day to gallons/day, multiply the quantities in Parts II through V by 42 gallons/barrel.

Attachment E-1 Example --
Worksheet to Plan Volume of Response Resources
for Worst Case Discharge - Petroleum Oils

Part I Background Information

Step (A) Calculate Worst Case Discharge in barrels (Appendix D) [170,000] (A)

Step (B) Oil Group[1] (Table 3 and section 1.2 of this appendix) . [4]

Step (C) Operating Area (choose one) . . [X] Near shore/Inland Great Lakes [ ] or Rivers and Canals

Step (D) Percentages of Oil (Table 2 of this appendix)

Percent Lost to Natural Dissipation	Percent Recovered Floating Oil	Percent Oil Onshore
10	50	70
(D1)	(D2)	(D3)

Step (E1) On-Water Oil Recovery $\frac{\text{Step (D2) x Step (A)}}{100}$ [85,000] (E1)

Step (E2) Shoreline Recovery $\frac{\text{Step (D3) x Step (A)}}{100}$ [119,000] (E2)

Step (F) Emulsification Factor (Table 3 of this appendix) . . . . . [1.4] (F)

Step (G) On-Water Oil Recovery Resource Mobilization Factor (Table 4 of this appendix)

Tier 1	Tier 2	Tier 3
0.15	0.25	0.40
(G1)	(G2)	(G3)

[1] A facility that handles, stores, or transports multiple groups of oil must do separate calculations for each oil group on site except for those oil groups that constitute 10 percent or less by volume of the total oil storage capacity at the facility. For purposes of this calculation, the volumes of all products in an oil group must be summed to determine the percentage of the facility's total oil storage capacity.

Attachment E-1 Example (continued) --
Worksheet to Plan Volume of Response Resources
for Worst Case Discharge - Petroleum Oils

Part II On-Water Oil Recovery Capacity (barrels/day)

Tier 1	Tier 2	Tier 3
17,850	29,750	47,600
Step (E1) x Step (F) x Step (G1)	Step (E1) x Step (F) x Step (G2)	Step (E1) x Step (F) x Step (G3)

Part III Shoreline Cleanup Volume (barrels) 166,600

Step (E2) x Step (F)

Part IV On-Water Response Capacity By Operating Area
(Table 5 of this appendix)
(Amount needed to be contracted for in barrels/day)

Tier 1	Tier 2	Tier 3
10,000	20,000	40,000
(J1)	(J2)	(J3)

Part V On-Water Amount Needed to be Identified, but not Contracted for in Advance (barrels/day)

Tier 1	Tier 2	Tier 3
7,850	9,750	7,600
Part II Tier 1 - Step (J1)	Part II Tier 2 - Step (J2)	Part II Tier 3 - Step (J3)

NOTE: To convert from barrels/day to gallons/day, multiply the quantities in Parts II through V by 42 gallons/barrel.

Attachment E-2 --
Worksheet to Plan Volume of Response Resources
for Worst Case Discharge - Animal Fats and Vegetable Oils

Part I Background Information

Step (A) Calculate Worst Case Discharge in barrels (Appendix D) [ ] (A)

Step (B) Oil Group[1] (Table 7 and section 1.2 of this appendix) . [ ]

Step (C) Operating Area (choose one) . . . . [ ] Near shore/Inland Great Lakes [ ] or Rivers and Canals

Step (D) Percentages of Oil (Table 6 of this appendix)

Percent Lost to Natural Dissipation	Percent Recovered Floating Oil	Percent Oil Onshore
[ ]	[ ]	[ ]
(D1)	(D2)	(D3)

Step (E1) On-Water Oil Recovery $\frac{\text{Step (D2) x Step (A)}}{100}$ [ ] (E1)

Step (E2) Shoreline Recovery $\frac{\text{Step (D3) x Step (A)}}{100}$ . . . [ ] (E2)

Step (F) Emulsification Factor (Table 7 of this appendix) . . . . . [ ] (F)

Step (G) On-Water Oil Recovery Resource Mobilization Factor (Table 4 of this appendix)

Tier 1	Tier 2	Tier 3
[ ]	[ ]	[ ]
(G1)	(G2)	(G3)

[1] A facility that handles, stores, or transports multiple groups of oil must do separate calculations for each oil group on site except for those oil groups that constitute 10 percent or less by volume of the total oil storage capacity at the facility. For purposes of this calculation, the volumes of all products in an oil group must be summed to determine the percentage of the facility's total oil storage capacity.

Attachment E-2 (continued) --
Worksheet to Plan Volume of Response Resources
for Worst Case Discharge - Animal Fats and Vegetable Oils

Part II On-Water Oil Recovery Capacity (barrels/day)

Tier 1	Tier 2	Tier 3
Step (E1) x Step (F) x Step (G1)	Step (E1) x Step (F) x Step (G2)	Step (E1) x Step (F) x Step (G3)

Part III Shoreline Cleanup Volume (barrels) . . . .

Step (E2) x Step (F)

Part IV On-Water Response Capacity By Operating Area
(Table 5 of this appendix)
(Amount needed to be contracted for in barrels/day)

Tier 1	Tier 2	Tier 3
(J1)	(J2)	(J3)

Part V On-Water Amount Needed to be Identified, but not Contracted for in Advance (barrels/day)

Tier 1	Tier 2	Tier 3
Part II Tier 1 - Step (J1)	Part II Tier 2 - Step (J2)	Part II Tier 3 - Step (J3)

NOTE: To convert from barrels/day to gallons/day, multiply the quantities in Parts II through V by 42 gallons/barrel.

Attachment E-2 Example --
Worksheet to Plan Volume of Response Resources
for Worst Case Discharge - Animal Fats and Vegetable Oils

Part I Background Information

Step (A) Calculate Worst Case Discharge in barrels (Appendix D) . . . . . [500,000] (A)

Step (B) Oil Group[1] (Table 7 and section 1.2 of this appendix) . . . . . [B]

Step (C) Operating Area (choose one) [X] Near shore/Inl and Great Lakes [ ] or Rivers and Canals

Step (D) Percentages of Oil (Table 6 of this appendix)

Percent Lost to Natural Dissipation	Percent Recovered Floating Oil	Percent Oil Onshore
30	20	50
(D1)	(D2)	(D3)

Step (E1) On-Water Oil Recovery $\frac{\text{Step (D2) x Step (A)}}{100}$ [100,000] (E1)

Step (E2) Shoreline Recovery $\frac{\text{Step (D3) x Step (A)}}{100}$ [250,000] (E2)

Step (F) Emulsification Factor (Table 7 of this appendix) . . . . . [2.0] (F)

Step (G) On-Water Oil Recovery Resource Mobilization Factor (Table 4 of this appendix)

Tier 1	Tier 2	Tier 3
0.15	0.25	0.40
(G1)	(G2)	(G3)

[1] A facility that handles, stores, or transports multiple groups of oil must do separate calculations for each oil group on site except for those oil groups that constitute 10 percent or less by volume of the total oil storage capacity at the facility. For purposes of this calculation, the volumes of all products in an oil group must be summed to determine the percentage of the facility's total oil storage capacity.

Attachment E-2 Example (continued) --
Worksheet to Plan Volume of Response Resources
for Worst Case Discharge - Animal Fats and Vegetable Oils (continued)

Part II On-Water Oil Recovery Capacity (barrels/day)

Tier 1	Tier 2	Tier 3
30,000	50,000	80,000
Step (E1) x Step (F) x Step (G1)	Step (E1) x Step (F) x Step (G2)	Step (E1) x Step (F) x Step (G3)

Part III Shoreline Cleanup Volume (barrels) 500,000

Step (E2) x Step (F)

Part IV On-Water Response Capacity By Operating Area
(Table 5 of this appendix)
(Amount needed to be contracted for in barrels/day)

Tier 1	Tier 2	Tier 3
12,500	25,000	50,000
(J1)	(J2)	(J3)

Part V On-Water Amount Needed to be Identified, but not Contracted for in Advance (barrels/day)

Tier 1	Tier 2	Tier 3
17,500	25,000	30,000
Part II Tier 1 - Step (J1)	Part II Tier 2 - Step (J2)	Part II Tier 3 - Step (J3)

NOTE: To convert from barrels/day to gallons/day, multiply the quantities in Parts II through V by 42 gallons/barrel.

10. Amend Appendix F to Part 112 and the attachments to Appendix F by revising the phrase ''section 10'' to read ''section 13'' wherever it appears.

11. Appendix F to Part 112 is further amended as follows:

a. Revise section 1.1, section 1.3 (A)(5), (6) and (7), and section 1.3.4.1;

b. Revise the first sentence of section 1.4.2 and sections 1.4.3 and 1.4.4 (12);

c. Revise sections 1.5, 1.5.1, 1.5.1.1, and 1.5.1.2;

d. Revise sections 1.6, 1.6.1, and 1.6.2;

e. Revise sections 1.7 and 1.7.1, the introductory text of section 1..7.1.1, and the introductory text of section 1.7.3;

f. Revise section 1.8.2 (B), section 1.8.3; and

g. Revise the introductory text of attachment F–1. The revised text reads as follows:

Appendix F To Part 112—Facility-Specific Response Plan

* * * * *

1.1 Emergency Response Action Plan

Several sections of the response plan shall be co-located for easy access by response personnel during an actual emergency or oil discharge. This collection of sections shall be called the Emergency Response Action Plan. The Agency intends that the Action Plan contain only as much information as is necessary to combat the discharge and be arranged so response actions are not delayed. The Action Plan may be arranged in a number of ways. For example, the sections of the Emergency Response Action Plan may be photocopies or condensed versions of the forms included in the associated sections of the response plan. Each Emergency Response Action Plan section may be tabbed for quick reference. The Action Plan shall be maintained in the front of the same binder that contains the complete response plan or it shall be contained in a separate binder. In the latter case, both binders shall be kept together so that the entire plan can be accessed by the qualified individual and appropriate spill response personnel. The Emergency Response Action Plan shall be made up of the following sections:

1. Qualified Individual Information (Section 1.2) partial
2. Emergency Notification Phone List (Section 1.3.1) partial
3. Spill Response Notification Form (Section 1.3.1) partial
4. Response Equipment List and Location (Section 1.3.2) complete
5. Response Equipment Testing and Deployment (Section 1.3.3) complete
6. Facility Response Team (Section 1.3.4) partial
7. Evacuation Plan (Section 1.3.5) condensed
8. Immediate Actions (Section 1.7.1) complete
9. Facility Diagram (Section 1.9) complete

* * * * *

1.3 Emergency Response Information

(A) * * *

(5) Section 1.3.4 lists the facility response personnel, including those employed by the facility and those under contract to the facility for response activities, the amount of time needed for personnel to respond, their responsibility in the case of an emergency, and their level of response training. Three different forms are included in this section. The Emergency Response Personnel List shall be composed of all personnel employed by the facility whose duties involve responding to emergencies, including oil discharges, even when they are not physically present at the site. An example of this type of person would be the Building Engineer-in-Charge or Plant Fire Chief. The second form is a list of the Emergency Response Contractors (both primary and secondary) retained by the facility. Any changes in contractor status must be reflected in updates to the response plan. Evidence of contracts with response contractors shall be included in this section so that the availability of resources can be verified. The last form is the Facility Response Team List, which shall be composed of both emergency response personnel (referenced by job title/position) and emergency response contractors, included in one of the two lists described above, that will respond immediately upon discovery of an oil discharge or other emergency (i.e., the first people to respond). These are to be persons normally on the facility premises or primary response contractors. Examples of these personnel would be the Facility Hazardous Materials (HAZMAT) Spill Team 1, Facility Fire Engine Company 1, Production Supervisor, or Transfer Supervisor. Company personnel must be able to respond immediately and adequately if contractor support is not available.

(6) Section 1.3.5 lists factors that must, as appropriate, be considered when preparing an evacuation plan.

(7) Section 1.3.6 references the responsibilities of the qualified individual for the facility in the event of an emergency.

* * * * *

1.3.5 Evacuation Plans

1.3.5.1 Based on the analysis of the facility, as discussed elsewhere in the plan, a facility-wide evacuation plan shall be developed. In addition, plans to evacuate parts of the facility that are at a high risk of exposure in the event of a discharge or other release must be developed. Evacuation routes must be shown on a diagram of the facility (see section 1.9 of this appendix). When developing evacuation plans, consideration must be given to the following factors, as appropriate:

(1) Location of stored materials;

(2) Hazard imposed by discharged material;

(3) Discharge flow direction;

(4) Prevailing wind direction and speed;

(5) Water currents, tides, or wave conditions (if applicable);

(6) Arrival route of emergency response personnel and response equipment;

(7) Evacuation routes;

(8) Alternative routes of evacuation;

(9) Transportation of injured personnel to nearest emergency medical facility;

(10) Location of alarm/notification systems;

(11) The need for a centralized check-in area for evacuation validation (roll call);

(12) Selection of a mitigation command center; and

(13) Location of shelter at the facility as an alternative to evacuation.

* * * * *

1.4.2 Vulnerability Analysis

The vulnerability analysis shall address the potential effects (*i.e.*, to human health, property, or the environment) of an oil discharge. * * *

* * * * *

1.4.3 Analysis of the Potential for an Oil Discharge

Each owner or operator shall analyze the probability of a discharge occurring at the facility. This analysis shall incorporate factors such as oil spill history, horizontal range of a potential discharge, and vulnerability to natural disaster, and shall, as appropriate, incorporate other factors such as tank age. This analysis will provide information for developing discharge scenarios for a worst case discharge and small and medium discharges and aid in the development of techniques to reduce the size and frequency of discharges. The owner or operator may need to research the age of the tanks and the oil spill history at the facility.

1.4.4 Facility Reportable Oil Spill History

* * * * *

(12) Description(s) of how each oil discharge was detected.

* * * * *

1.5 Discharge Scenarios

In this section, the owner or operator is required to provide a description of the facility's worst case discharge, as well as a small and medium discharge, as appropriate. A multi-level planning approach has been chosen because the response actions to a discharge (*i.e.*, necessary response equipment, products, and personnel) are dependent on the magnitude of the discharge. Planning for lesser discharges is necessary because the nature of the response may be qualitatively different depending on the quantity of the discharge. The facility owner or operator shall discuss the potential direction of the discharge pathway.

1.5.1 Small and Medium Discharges

1.5.1.1 To address multi-level planning requirements, the owner or operator must consider types of facility-specific discharge scenarios that may contribute to a small or medium discharge. The scenarios shall account for all the operations that take place at the facility, including but not limited to:

(1) Loading and unloading of surface transportation;

(2) Facility maintenance;

(3) Facility piping;

(4) Pumping stations and sumps;

(5) Oil storage tanks;

(6) Vehicle refueling; and

(7) Age and condition of facility and components.

1.5.1.2 The scenarios shall also consider factors that affect the response efforts required by the facility. These include but are not limited to:

(1) Size of the discharge;
(2) Proximity to downgradient wells, waterways, and drinking water intakes;
(3) Proximity to fish and wildlife and sensitive environments;
(4) Likelihood that the discharge will travel offsite (*i.e.,* topography, drainage);
(5) Location of the material discharged (*i.e.,* on a concrete pad or directly on the soil);
(6) Material discharged;
(7) Weather or aquatic conditions (*i.e.,* river flow);
(8) Available remediation equipment;
(9) Probability of a chain reaction of failures; and
(10) Direction of discharge pathway.

* * * * *

1.6 Discharge Detection Systems

In this section, the facility owner or operator shall provide a detailed description of the procedures and equipment used to detect discharges. A section on discharge detection by personnel and a discussion of automated discharge detection, if applicable, shall be included for both regular operations and after hours operations. In addition, the facility owner or operator shall discuss how the reliability of any automated system will be checked and how frequently the system will be inspected.

1.6.1 Discharge Detection by Personnel

In this section, facility owners or operators shall describe the procedures and personnel that will detect any discharge of oil or release of a hazardous substance. A thorough discussion of facility inspections must be included. In addition, a description of initial response actions shall be addressed. This section shall reference section 1.3.1 of the response plan for emergency response information.

1.6.2 Automated Discharge Detection

In this section, facility owners or operators must describe any automated discharge detection equipment that the facility has in place. This section shall include a discussion of overfill alarms, secondary containment sensors, etc. A discussion of the plans to verify an automated alarm and the actions to be taken once verified must also be included.

1.7 Plan Implementation

In this section, facility owners or operators must explain in detail how to implement the facility's emergency response plan by describing response actions to be carried out under the plan to ensure the safety of the facility and to mitigate or prevent discharges described in section 1.5 of the response plan. This section shall include the identification of response resources for small, medium, and worst case discharges; disposal plans; and containment and drainage planning. A list of those personnel who would be involved in the cleanup shall be identified. Procedures that the facility will use, where appropriate or necessary, to update their plan after an oil discharge event and the time frame to update the plan must be described.

1.7.1 Response Resources for Small, Medium, and Worst Case Discharges

1.7.1.1 Once the discharge scenarios have been identified in section 1.5 of the response plan, the facility owner or operator shall identify and describe implementation of the response actions. The facility owner or operator shall demonstrate accessibility to the proper response personnel and equipment to effectively respond to all of the identified discharge scenarios. The determination and demonstration of adequate response capability are presented in Appendix E to this part. In addition, steps to expedite the cleanup of oil discharges must be discussed. At a minimum, the following items must be addressed: * * *

* * * * *

1.7.3 Containment and Drainage Planning

A proper plan to contain and control a discharge through drainage may limit the threat of harm to human health and the environment. This section shall describe how to contain and control a discharge through drainage, including: * * *

* * * * *

1.8.2 Facility Drills/Exercises

(A) * * *

(B) The PREP Guidelines specify that the facility conduct internal and external drills/exercises. The internal exercises include: qualified individual notification drills, spill management team tabletop exercises, equipment deployment exercises, and unannounced exercises. External exercises include Area Exercises. Credit for an Area or Facility-specific Exercise will be given to the facility for an actual response to a discharge in the area if the plan was utilized for response to the discharge and the objectives of the Exercise were met and were properly evaluated, documented, and self-certified.

* * * * *

1.8.3 Response Training

Section 112.21(a) requires facility owners or operators to develop programs for facility response training. Facility owners or operators are required by § 112.20(h)(8)(iii) to provide a description of the response training program to be carried out under the response plan. A facility's training program can be based on the USCG's Training Elements for Oil Spill Response, to the extent applicable to facility operations, or another response training program acceptable to the RA. The training elements are available from the USCG Office of Response (G–MOR) at (202) 267–0518 or fax 267–4085/4065. Personnel response training logs and discharge prevention meeting logs shall be included in sections 1.8.3.1 and 1.8.3.2 of the response plan respectively. These logs may be included in the facility response plan or kept as an annex to the facility response plan.

* * * * *

1.9 Diagrams

* * * * *

(2) * * *

(H) direction of discharge flow from discharge points.

* * * * *

Attachments to Appendix F

Attachment F–1—Response Plan Cover Sheet

This cover sheet will provide EPA with basic information concerning the facility. It must accompany a submitted facility response plan. Explanations and detailed instructions can be found in Appendix F. Please type or write legibly in blue or black ink. Public reporting burden for the collection of this information is estimated to vary from 1 hour to 270 hours per response in the first year, with an average of 5 hours per response. This estimate includes time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate of this information, including suggestions for reducing this burden to: Chief, Information Policy Branch, Mail Code: PM–2822, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington D.C. 20503.

* * * * *

[FR Doc. 00–13976 Filed 6–29–00; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Friday,
June 30, 2000

Part IV

Department of Transportation

Coast Guard

33 CFR Part 154

Response Plans for Marine Transportation-Related Facilities Handling Non-Petroleum Oils; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 154

[USCG–1999–5149]

RIN 2115–AF79

Response Plans for Marine Transportation-Related Facilities Handling Non-Petroleum Oils

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule amends Coast Guard regulations requiring response plans for marine transportation-related (MTR) facilities that handle, store, or transport animal fats or vegetable oils. Specifically, the new rule downgrades the initial classification of affected facilities and clarifies planning and equipment requirements. This final rule addresses a statutory mandate.

DATES: This final rule is effective December 27, 2000.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the Docket Management Facility, (USCG–1998–4469), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. You may also access docket materials over the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, contact Lieutenant Claudia Gelzer, Project Manager, Office of Response (G–MOR) Coast Guard, telephone 202–267–1983. For questions on viewing, or submitting material to the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On March 14, 1997, the National Oil Processors Association (NOPA) petitioned the Coast Guard to change response plan regulations for marine transportation-related (MTR) facilities to more fully differentiate animal fat and vegetable oil facilities from other oil facilities.

On October 21, 1998, Congress passed the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277). Section 343(b) of that act mandated the Coast Guard to amend, by March 31, 1999, 33 CFR part 154 to comply with the Edible Oil Regulatory Reform Act (EORRA) (Pub. L. 104–55).

These regulations address the mandate from Congress and the petition from NOPA. This final rule amends only response plan requirements for marine transportation-related (MTR) facilities that handle, store, or transport animal fats and vegetable oils.

Legislative and Regulatory History

On August 18, 1990, Congress passed the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) in response to several major oil spills. OPA 90 amended section 311(j) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321(j)) establishing requirements, and an implementation schedule, for facility response plans. The FWPCA, as amended by OPA 90, directs the President to issue regulations requiring response plans for MTR facilities transferring oil.

The President delegated the authority to issue these regulations to the Commandant, U.S. Coast Guard through the Secretary of the Department of Transportation. On February 5, 1993, the Coast Guard published an interim final rule (IFR) in the **Federal Register** entitled ''Response Plans for Marine Transportation-Related Facilities''(58 FR 7330).

On November 20, 1995, Congress passed the Edible Oil Regulatory Reform Act (EORRA). This act required Federal agencies to differentiate between fats, oils, and greases of animal, marine, or vegetable origin, and other oils and greases, in issuing regulations. The act also required Federal agencies to consider the environmental effects and the physical, chemical, biological, and other properties of the different classes of fats, oils, and greases.

On February 29, 1996, the Coast Guard published its final rule (FR) on response plans for MTR facilities in the **Federal Register** (61 FR 7890). In developing the final rule, the Coast Guard fully complied with EORRA by differentiating between oils of animal or vegetable origin and other oils based upon physical, chemical, biological and other properties. The Coast Guard carefully considered all comments to the IFR, including those from the animal fats and vegetable oils industry. At the industry's request, Coast Guard officials also met with industry representatives to hear their views. The Coast Guard also considered the views and comments of other Federal agencies with expertise, including the U.S. Environmental Protection Agency and the U.S. Fish and Wildlife Service. These regulations have been codified in 33 CFR part 154, subparts F through I. In meetings with Coast Guard officials, animal fat and vegetable oil industry representatives stated their main request was that animal fats and vegetable oils be separated from petroleum oils and other oils in the regulations. The industry representatives stated that this was largely a public relations issue due to the bad publicity petroleum oil spills had received. The Coast Guard concluded, based upon all comments to the docket and its own research, that separate subparts were in keeping with both the letter and spirit of EORRA. Therefore, The final rule added two new subparts to the response plan regulations (subparts H and I). Subpart H contained planning requirements for animal fat and vegetable oil facilities, while subpart I contained planning requirements for other non-petroleum oil facilities. The final rule also allowed animal fat and vegetable oil facilities to propose needed response equipment and personnel for worst case discharges (WCD), rather than the specific equipment and personnel required for petroleum oil facilities.

On October 19, 1996, Congress passed the Coast Guard Authorization Act of 1996 (Pub. L. 104–324). Section 1130 of that act required the Secretary of Transportation to submit to Congress an annual report describing how new Coast Guard regulations have met EORRA requirements. The Secretary of Transportation submitted reports on April 11, 1997, and March 3, 1998. The reports, available in the public docket for this proposed rule, describe how the Coast Guard's regulations have met the EORRA requirements.

In a letter dated March 14, 1997, NOPA filed a petition with the Coast Guard requesting amendments to the MTR facility response plan regulations. The petition requested separate and appropriate regulations for facilities that handle animal fats and vegetable oils.

On October 27, 1997, Congress passed the Department of Transportation and Related Agencies Appropriations Act of 1998 (Pub. L. 105–66). Section 341 of that Act stated that the Coast Guard could not use any of the available funds to issue, implement, or enforce a regulation or to establish an interpretation or guideline under the EORRA that did not recognize and provide for differences in—

- Physical, chemical, biological, and other relevant properties; and
- Environmental effects.

On October 21, 1998, Congress passed the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999. Section 343(b) of that act required that not later than March 31, 1999, the Coast Guard issue regulations amending 33 CFR part

154 to comply with the requirements of the EORRA.

On October 21, 1998, Congress also passed the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1999 (Pub. L. 105–276), which contained a similar requirement for the Environmental Protection Agency (EPA) to amend its regulations to comply with EORRA. On January 16, 1998, NOPA filed, with EPA, a petition similar to the one filed with the Coast Guard. In a separate notice of proposed rulemaking (NPRM), EPA proposed modifications to its response plan rules for animal fat and vegetable oil facilities.

On April 8, 1999, we published a notice of proposed rulemaking entitled ''Response Plans for Marine Transportation-Related Facilities Handling Non-Petroleum Oils'' in the **Federal Register** (64 FR 17222). We have received ten industry letters commenting on the proposed rulemaking. No public hearing was requested, and none was held.

The Coast Guard and EPA were each given the same mandate to amend the regulations pertaining to facilities that handle, store and transport animal fats and vegetable oils. The two agencies have worked together to develop this final rule, and ensure harmonization in the rules wherever possible. Each agency regulates a distinct community of facilities, that while sharing similarities, have different physical activities and different response schemes to fit their environments. Each of the agencies' rules addresses the most probable activities for the facilities under its jurisdiction. One significant difference between MTR facilities and non transportation-related facilities is in the volume of worst case discharges. EPA facilities generally have a significantly greater potential for large discharges than do Coast Guard-regulated facilities. EPA-regulated facilities tend to have a larger number of oil transfers, with a significant potential for small and medium discharges. The worst case discharge from an EPA-regulated facility is determined by the capacity of the largest bulk storage tank; Coast Guard-regulated facilities calculate worst case discharge by estimating the amount of oil in the pipeline from the first valve inside the secondary containment to the dock, and determining flow rate for loading and unloading a vessel. Thus, each agency's final rule is tailored to meet the needs of the types of facilities it regulates.

In developing this final rule, the Coast Guard researched and identified a total of 61 MTR facilities that handle, store, or transport animal fats or vegetable oils throughout the nation. Of these facilities, 26 handle animal fat/vegetable oils exclusively. The Coast Guard determined that this regulation impacts only these 26 facilities as those that also handle petroleum products must also comply with response plan requirements in 33 CFR 154, Subpart F.

In evaluating the worst case discharges from these 26 facilities, the Coast Guard identified a range from 2,136 gallons to 152,628 gallons. Among the 26 facilities' worst case discharges, 50 percent were less than 10,000 gallons, and 77 percent were less than 25,000 gallons.

Discussion of Comments

In the preamble of the NPRM, we specifically requested public comment on the appropriateness of providing planning volume tables in the amended regulations for animal fat and vegetable oil facilities. The tables were developed by the EPA to calculate planning volumes. We requested comment on whether these tables, similar to existing tables in both agencies' petroleum oil regulations, would be useful to the animal fat/vegetable oil industry. We received no comments from industry to indicate support or opposition to the tables.

To afford maximum flexibility to the regulated community, we have decided to allow use of planning tables as an option, but not require their use. The tables may allow certain facilities to provide a more appropriate level of response resources to mitigate an oil spill. If you believe that your facility will benefit from using the tables as a planning tool, they can be found in EPA regulations, 40 CFR part 112, Appendix E, Section 10.0, Tables 6 and 7.

We received ten industry comment letters in response to our notice of proposed rulemaking. The following discussion summarizes the comments received and our response to proposed changes.

Eight comment letters include specific statements of support for the changes we proposed in the NPRM. The letters also included additional suggestions for changes to the regulation. All comments received are outlined in this section.

We received four comments recommending that we reconsider our proposal to require planning for an average most probable discharge (AMPD). We received one comment in support of this proposed requirement. The Coast Guard's decision to require AMPD planning came from the evaluation of spills from animal fat/vegetable oil facilities. An analysis of data from the Coast Guard's Marine Safety Information System (MSIS), (spill history between 1992 and 1998) revealed a pattern of relatively small spill volumes (82 percent of the animal fat/vegetable oil discharges were less than 100 gallons). These volumes meet the average most probable discharge criteria as defined in 33 CFR part 154.1020. The Coast Guard finds that requiring animal fat/vegetable oil facilities to plan for average most probable discharge will better prepare them to respond to more realistic scenarios in addition to assisting them in planning for worst case discharges, as required by OPA 90.

The Coast Guard received five comments requesting that we reconsider the proposed requirement for animal fat/vegetable oil facilities to have at least 1,000 feet of boom on scene within an hour of spill detection. Current Coast Guard regulations require at least 1,000 feet of boom for significant and substantial harm facilities that handle Group I through Group IV petroleum oils. We expect that fixed animal fat and vegetable oil facilities already have access to this quantity of boom through existing worst case discharge (WCD) volume planning. Furthermore, under the Environmental Protection Agency regulations on facility response plans in 40 CFR 112, we expect that facilities currently regulated by this final rule would already have at least 1,000 feet of containment boom that can be deployed within one hour. In responding to the Notice of Proposed Rulemaking, four commenters simply requested reconsideration of the proposal and one commenter stated that the additional requirement for 1,000 feet of boom is unnecessary. Without further explanation, we presume the commenter is suggesting that the requirement is unnecessary because the EPA regulations already include this requirement. We disagree and formally make this requirement a part of Coast Guard regulations to help ensure that all animal fat/vegetable oil facilities can quickly provide at least this minimum amount of response equipment in the event of a spill. Also, any marine transportation-related animal fat/vegetable oil facility that may come into existence would be required to have this response equipment.

Current regulations require a minimum of 200 feet of boom for substantial harm facilities handling petroleum oils under Subpart F. This same requirement will still apply for animal fat/vegetable oil mobile facilities, and fixed animal fat/vegetable oil facilities that are part of a non-transportation-related onshore facility

with a storage capacity of less than 42,000 gallons.

We received five comments indicating that the NPRM inappropriately applies the response requirements for Higher Volume Port areas to animal fat/vegetable oil facilities, and that the Tier 1 response for these facilities should be relaxed from 6 to 12 hours. We disagree. Relaxing the requirements could double the response time in the event of a spill, which would significantly reduce the effectiveness of the response. Immediate action is critical when mitigating a spill. A quick response prevents problems with controlling and collecting oil. Control and collection are more difficult when the oil has dispersed or combined with water. Furthermore, the commenters suggested that because we designated higher volume port areas based on the location of petroleum oil facilities, this requirement should not apply to animal fat and vegetable oil facilities. The designation of higher volume port areas is not based on the location of petroleum oil facilities. Rather, the areas were selected because of the availability of response resources. Facilities located in higher volume port areas have a higher density of response contractors and resources nearby. Data on animal fat/vegetable oil facilities provided by Coast Guard field units suggest that about 25 percent of animal fat/vegetable oil facilities are in higher volume port areas, and we believe those facilities can achieve more rapid response times than facilities in other areas.

We received four comments requesting that we relax the requirements for equipment exercises for animal fat/vegetable oil facilities from semiannual to annual. We consider the current requirements appropriate. The current regulations require semi-annual equipment deployment exercises for facility owned or operated equipment and annual equipment deployment exercises for OSRO equipment. These standards are in accordance with the requirements of the National Preparedness for Response Exercise Program (PREP).

We received five comments recommending that we revise the regulations to permit the ''no action'' response alternative under certain, well-defined circumstances. We do not consider it appropriate to specify ''no action'' as a response alternative for planning purposes, and we are not revising the regulations in this way. The Federal On-Scene Coordinator (FOSC) has the authority to decide on the appropriate level of response action to an oil spill, ranging from taking no action to taking vigorous and extensive action. Such decisions are made on a case-by-case basis and after evaluating a range of factors such as: Spill amount; proximity to threatened areas; type of oil; weather conditions; and tides and currents.

We received seven comments requesting that the section of the regulation addressing ''other appropriate equipment'' as specified in 33 CFR part 154.1240(4) be modified to specifically identify mechanical dispersal equipment. We disagree. The Coast Guard, as Federal On-Scene Coordinator (FOSC), has the authority to determine whether a specific response technique is appropriate for any given spill response in the coastal zone. It is not appropriate to limit that authority by prescribing specific response techniques within the regulations. Under the current regulations, such techniques may be used under certain conditions, as decided by the Federal On-Scene Coordinator (FOSC). Response to an oil spill will take into account a range of factors and variables as listed in the preceding paragraph.

We received five comments requesting that facilities be permitted to plan for the use of public fire-fighting resources. The current regulations permit facilities to use public resources that are supported by local municipal, county, city, or state organizations, as well as other public resources. There must be a cooperative agreement between the facility and the public resource indicating that both parties understand all expectations. However, under a separate regulatory project (USCG–1998–3497), we are reviewing the possible conditions under which the industry as a whole needs fire-fighting resources, and we may propose further planning criteria based on that review. Therefore, we have revised the wording in subpart H for clarification.

We received four comments requesting that we allow a facility to be the lead exercise developer and final decision authority on exercise design, as a condition of participating in Area Exercises. The current exercise guidelines allow for this opportunity. The Coast Guard strongly encourages each MTR facility to participate in PREP, and volunteer to assume the lead plan holder's role in industry-led area exercises. When this happens, the lead facility does have the primary voice and final decision authority in the exercise design. Likewise, in government-led PREP area exercises or non-PREP area exercises, the Federal On-Scene Coordinator (FOSC) is the lead plan holder and has final decision authority in exercise design. In all cases, exercise design should be conducted as a cooperative effort of the entire design team, including the State government, the Coast Guard, and the industry.

We also received four comments recommending that we eliminate the requirement for annual plan reviews while retaining the requirement to report changes to plans as they occur. We disagree with this recommendation. Thorough and regular review of plans is critical to plan viability. Formal plan review ensures that plan holders keep crucial response information such as phone contacts, reporting requirements and equipment inventories up-to-date. We are retaining both requirements.

We received five comments requesting that regulations be modified to require animal fat/vegetable oil facilities to include, as part of the spill mitigation procedures, those procedures to be taken by the facility personnel in the event of a discharge resulting from fire or explosion. We have considered this request and decided not to impose this additional requirement. Historical spill data does not indicate a high risk of fire or explosion in connection with animal fat/vegetable oil spills to justify such a requirement. Plus, fires at MTR facilities fall within the response jurisdiction of local municipal, county or city fire departments that are charged with protection of public health and safety. We encourage facilities to closely coordinate with Local Emergency Planning Committees to ensure a safe and effective response in the event of fire or explosion.

We also received several comments requesting changes that were not proposed in our Notice of Proposed Rulemaking. Those suggestions are beyond the scope of this rulemaking and therefore not included in this rule.

We received one comment requesting that we further differentiate the regulation of facilities that handle other classes of non-petroleum oils in addition to animal fats and vegetable oils, such as polydimethylsiloxane, (PDMS). These changes are outside the scope of this rulemaking, which amends only 33 CFR part 154 subpart H-Response Plans for Animal Fats and Vegetable Oils Facilities. Facilities that handle PDMS are regulated by 33 CFR part 154 subpart I, ''Response Plans for Other Non-Petroleum Oil Facilities.''

We also received one comment that referred to Executive Order 13101, ''Greening the Government through Waste Prevention, Recycling, and Federal Acquisition,'' signed on September 14, 1998. (63 FR 49641–49651) Executive Order 13101 directs all government agencies to make efforts to purchase environmentally preferable products and services.

''Environmentally preferable'' refers to products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services. In addition to promoting environmentally preferable purchasing, the Executive Order encourages agencies to purchase bio-based products, such as animal fats and vegetable oils. The comment suggests that our regulations should recognize the same differences in characteristics that the government used to promote the use of bio-based products as environmentally preferred products. Executive Order 13101 applies to government procurement of products and services, not planning requirements for effective response to oil spills. We have found that animal fats and vegetable oils have many properties similar to petroleum oils and produce many of the same environmental effects when discharged into the environment. The properties of these bio-based products do not affect the probability that they might be discharged when they are handled, stored, or transported. If the result of the Executive Order is to increase use of these products, it will be even more important that facilities are prepared to respond to a spill.

Discussion of Rule

We are making the following three changes to our existing regulations.

(a) *Downgrading the initial classification of affected facilities from significant and substantial harm to substantial harm.* This regulation downgrades the initial classification of all animal fat/vegetable oil facilities to substantial harm. The Captain of the Port (COTP) has the authority to upgrade a facility to significant and substantial harm based upon factors such as: type and quantity of oil; spill history of the facility; the age of the facility; the proximity to water supply intakes; and proximity to navigable waters; as outlined in 33 CFR part 154.1216(b). The Coast Guard's Marine Safety Information System (MSIS) database collects information on various marine activities. We used MSIS to review facility spill history of marine transportation-related facilities between 1992 and 1998, and we found that 31 animal fat or vegetable oil spills were reported during that time, ranging from 1 to 7,500 gallons. Of those 31 spills, 28 (90 percent) were less than 1,000 gallons; of those 28 spills, 23 were less than 100 gallons. While animal fats and vegetable oils may be just as damaging, or more so, as other oils when discharged into the environment, we reclassified animal fat and vegetable oil facilities from significant and substantial harm to substantial harm, taking into account this history of small volume spills.

(b) *Requiring planning for an average most probable discharge (AMPD).* The spill history we have used to justify downgrading animal fat and vegetable oil facilities shows a pattern of relatively small spill volumes. These volumes meet the criteria for AMPD volumes defined in 33 CFR part 154.1020. Accordingly, we will now require AMPD planning in addition to worst case planning. By requiring AMPD planning, we will further harmonize our regulations with EPA's. We do not anticipate that requiring AMPD planning will increase planning burdens for animal fat and vegetable oil facilities. Under 33 CFR part 154.545, we already require all oil facilities to plan for responses to operational discharges. Animal fat or vegetable oil facilities may use the planning done to meet the requirements under 33 CFR part 154.545 to help satisfy the AMPD planning requirements. The new 33 CFR part 154.545(e) explicitly allows this option.

(c) *Requiring at least 1,000 feet of boom for fixed facilities.* Current regulations require at least 1,000 feet of boom for Group I through Group IV petroleum oils. (Groups of oils are explained in the definitions for persistent and non-persistent oils under 33 CFR part 154.1017.) We expect that fixed animal fat and vegetable oil facilities already have access to this quantity of boom through existing worst case discharge (WCD) volume planning, and in planning for responses to operational discharges under 33 CFR part 154.545. Furthermore, EPA regulations in 40 CFR part 112 require the facilities currently regulated by this final rule to have at least 1,000 feet of containment boom that can be deployed within one hour. Therefore, this requirement is not expected to add an additional burden on the industry. This requirement is made to ensure that any marine transportation-related animal fat/vegetable oil facility that may come into existence, and that may not otherwise be required to have this response equipment, be required to do so. The requirement for 200 feet of boom will still apply for animal fat/vegetable oil mobile facilities and fixed animal fat/vegetable oil facilities that are part of a non-transportation-related onshore facility with a storage capacity of less than 42,000 gallons.

(d) We have made several non-substantive changes from the NPRM to further clarify the regulations.

(1) We moved the paragraphs that were 33 CFR part 154.1240(d) and (e) in the NPRM to 33 CFR part 154.1225(f) and (g) in the final rule. This clarifies that our intent is to require at least 1,000 feet of boom for all fixed animal fats and vegetable oil facilities (except those with a storage capacity of less than 42,000 gallons), whether classified as substantial harm or as significant and substantial harm facilities.

(2) In 33 CFR part 154.1220(a), we removed section 154.1035 from the list of sections that do not apply to substantial harm MTR facilities. 33 CFR part 154.1035 applies to petroleum oil facilities classified as significant and substantial harm. Animal fat and vegetable oil facilities that are classified as substantial harm facilities must comply with 33 CFR part 154.1035 as modified by 33 CFR part 154.1240. Animal fat and vegetable oil facilities that are upgraded to significant and substantial harm must comply with all of 33 CFR part 154.1035.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget (OMB) has not reviewed it under that Order. It is ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). A final Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is available in the docket as indicated under **ADDRESSES.** A summary of the Regulatory Evaluation follows:

Summary of Costs

This regulation includes three measures that impact industry. The first measure, downgrading animal fat or vegetable oil facilities from significant and substantial harm to substantial harm will not result in any additional costs to the industry. The second measure, requiring average most probable discharge planning, might result in minor additional costs to the industry by increasing the amount of information a facility has to report. We estimate that owners or operators of facilities will spend 4 hours amending their response plans. The additional cost per response plan would be $140 ($35 per hour x 4 burden hours). We have conducted research and found that the Coast Guard regulates 26 fixed and mobile marine transportation-related facilities that handle, store, or transport animal fats and vegetable oils

exclusively. The total estimated annual cost for all 26 facilities would be $3,640 (26 facilities x $140 per response plan). Finally, we do not expect that requiring a minimum amount of boom for fixed facilities will add any cost to the proposed rule. When planning for a WCD under current regulations, it is expected that fixed animal fat and vegetable oil facilities, regardless of their classification, already identify in their response plans the greater of 1,000 feet or twice the length of the longest vessel that regularly conducts operations at the facility of boom that can be deployed on scene within one hour of an incident. Therefore, we estimate that 100 percent of the regulated, fixed facilities already meet this requirement.

The amended regulation is expected to decrease costs to the government. Those facilities downgraded from significant and substantial harm to substantial harm will no longer need Coast Guard approval of their response plans. Therefore, the workload of Coast Guard field units will decrease.

Summary of Benefits

The rule will reduce regulatory burden, further harmonize federal agency regulations, formalize discharge planning for smaller spills, and ensure that an adequate quantity of boom is maintained at the facilities. Downgrading the classification of animal fat/vegetable oil facilities to substantial harm eliminates the need for these facilities to obtain Coast Guard approval, which saves time for both the industry and the Coast Guard. Facilities will still be required to submit plans, but will not need Coast Guard approval. Requiring facilities to plan for the average most probable discharge further aligns these regulations with those of EPA and better prepares facilities to respond to smaller, more common spills. Requiring a minimum amount of boom—1,000 feet or twice the length of the longest vessel—ensures that facilities are in a better position to immediately prevent the spread of oil in the event of a spill.

Small Entities

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

An Initial Regulatory Flexibility Analysis discussing the impact of this final rule on small entities is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Although this rule will reduce the regulatory burden on the affected facilities, it will also slightly increase their record-keeping requirement. The additional level of response planning will result in only minor additional informational reporting burdens. Each of the 26 affected facilities will incur 4 additional hours of information reporting burden. This will result in an additional cost of $140 per facility (4 hours x $35 per hour). We decided to require facilities to plan for AMPD spills because the spill history of these facilities shows a pattern of relatively small spill volumes. Our research indicated that most of the 26 facilities affected by this rule are not small entities. We did not receive any comments from small entities during this rulemaking indicating that the additional record-keeping cost would present a significant economic impact on them. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact the Project Development Division (G–MSR–1) at 202–267–6819.

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

Collection of Information

This rule calls for an additional collection of information, under an already approved collection, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c) ''collection of information'' includes reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the respondents, and an estimate of the total annual burden follow. Included in the estimate is the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Vessel Response Plans, Facility Response Plans, Shipboard Oil Pollution Emergency Plans, and Additional Response Equipment Requirements for Prince William Sound.

Summary of Collection: This additional collection of information will be included under the current, approved Office of Management and Budget (OMB) collection numbered 2115–0595 entitled Vessel Response Plans, Facility Response Plans, Shipboard Oil Pollution Emergency Plans, and Additional Response Equipment Requirements for Prince William Sound. This rulemaking will add 104 hours to the already approved collection of information. The new total number of annual hours requested will be 188,733, which includes the facility response plans, vessel response plans, shipboard oil pollution emergency plans and additional equipment requirements for Prince William Sound. The new collection of information requirements for this rule are described in sections: § 154.1220 and § 154.1225.

Need for Information: This rule will require owners or operators of each facility to modify their facility response plans to plan for an AMPD of animal fats and vegetable oils.

Proposed Use of Information: We will use this information to ensure that such facilities are prepared to respond in the event of a spill incident. The information will be reviewed by the Coast Guard to assess the effectiveness of the facility response plans.

Description of the Respondents: An owner or operator of a facility that handles, stores or transports animal fats and vegetable oils.

Number of respondents: 26 facilities.

Frequency of Response: Annual.

Burden of response: 4 hours per respondent.

Estimated Total Annual burden: 104 hours.

As required by 44 U.S.C. 3507(d), we submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB approval of the collection is pending. You are not required to respond to a collection of information unless it displays a

currently valid OMB control number. We will announce when OMB grants approval for this collection of information, by separate notice in the **Federal Register**.

We solicited public comment on the collection of information to (1) Evaluate whether the information is necessary for the proper performance of the functions of the Coast Guard, including whether the information would have practical utility; (2) evaluate the accuracy of the Coast Guard's estimate of the burden of the collection, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection on those who are to respond, as by allowing the submission of responses by electronic means or the use of other forms of information technology. There were no comments submitted.

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their regulatory actions not specifically required by law. In particular, the act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. This rule will not result in such an expenditure.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

We considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph (34)(a) and (e), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. This rule will not result in—

(a) Significant cumulative impacts on the human environment;

(b) A substantial controversy or substantial change to existing environmental conditions;

(c) Impacts which are more than minimal on properties protected under 4(f) the DOT Act, as superseded by Public Law 97–449 and section 106 of the National Historic Preservation Act; or

(d) Inconsistencies with any Federal, State, or local laws, or administrative determinations relating to the environment. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 154

Fire prevention, Hazardous substances, Oil pollution, Reporting and record keeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 154 as follows:

PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIALS IN BULK

1. The authority citation for part 154 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6) and (M)(2); sec. 2, E.O. 12777, 56 FR 54757; 49 CFR 1.46. Subpart F is also issued under 33 U.S.C. 2735.

§ 154.545 [Amended]

2. In § 154.545(e), add the words ''and subpart H'' after the words ''of subpart F''.

§ 154.1020 [Amended]

3. In the definition for *Facility that could reasonably be expected to cause significant and substantial harm,* remove all words after ''under § 154.1015(c)'' and add, in their place, the words ''and § 154.1216.''

4. In the definition for *Facility that could reasonably be expected to cause substantial harm,* remove all words after ''under § 154.1015(b)'' and add, in their place, the words ''and § 154.1216.''

5. Revise § 154.1210 to read as follows:

§ 154.1210 Purpose and applicability.

(a) The requirements of this subpart are intended for use in developing response plans and identifying response resources during the planning process. They are not performance standards.

(b) This subpart establishes oil spill response planning requirements for an owner or operator of a facility that handles, stores, or transports animal fats or vegetable oils including—

(1) A fixed MTR facility capable of transferring oil in bulk, to or from a vessel with a capacity of 250 barrels or more; and

(2) A mobile MTR facility used or intended to be used to transfer oil to or from a vessel with a capacity of 250 barrels or more.

6. Add § 154.1216 to read as follows:

§ 154.1216 Facility classification.

(a) The Coast Guard classifies facilities that handle, store, or transport animal fats or vegetable oils as ''substantial harm'' facilities because they may cause substantial harm to the environment by discharging oil.

(b) The COTP may change the classification of a facility that handles, stores, or transports animal fats or vegetable oils. The COTP may consider the following factors, and any other relevant factors, before changing the classification of a facility:

(1) The type and quantity of oils handled.

(2) The spill history of the facility.

(3) The age of the facility.

(4) The public and commercial water supply intakes near the facility.

(5) The navigable waters near the facility. *Navigable waters* is defined in 33 CFR part 2.05–25.

(6) The fish, wildlife, and sensitive environments near the facility.

7. Revise § 154.1220 to read as follows:

§ 154.1220 Response plan submission requirements.

(a) The owner or operator of an MTR facility identified in § 154.1216 as a substantial harm facility, shall prepare and submit to the cognizant COTP a response plan that complies with this subpart and all sections of subpart F of this part, as appropriate, except §§ 154.1015, 154.1016, 154.1017, 154.1028, 154.1045 and 154.1047.

(b) The owner or operator of an MTR facility classified by the COTP under § 154.1216(b) as a significant and substantial harm facility, shall prepare and submit for review and approval of the cognizant COTP a response plan that complies with this subpart and all sections of subpart F of this part, as appropriate, except §§ 154.1015,

154.1016, 154.1017, 154.1028, 154.1045 and 154.1047.

(c) In addition to the requirements in paragraph (a) of this section, the response plan for a mobile MTR facility must meet the requirements of § 154.1041 subpart F.

8. In § 154.1225, revise the section heading and paragraphs (a) introductory text, (a)(1), (b), (c), (d), and (e); redesignate paragraph (f) as paragraph (h) and revise it; and add paragraphs (f) and (g) to read as follows:

§ 154.1225 Specific response plan development and evaluation criteria and other requirements for fixed facilities that handle, store, or transport animal fats or vegetable oils.

(a) The owner or operator of a fixed facility that handles, stores, or transports animal fats or vegetable oils must include information in the response plan that identifies—

(1) The procedures and strategies for responding to a worst case discharge and to an average most probable discharge of an animal fat or vegetable oil to the maximum extent practicable; and

* * * * *

(b) The owner or operator of a fixed facility must ensure the equipment listed in the response plan will operate in the geographic area(s) where the facility operates. To determine if the equipment will operate, the owner or operator must—

(1) Use the criteria in Table 1 and Section 2 of appendix C of this part; and

(2) Consider the limitations in the area contingency plan for the COTP zone where the facility is located, including

(i) Ice conditions;

(ii) Debris;

(iii) Temperature ranges; and

(iv) Weather-related visibility.

(c) The owner or operator of a facility that handles, stores, or transports animal fats or vegetable oils must name the personnel and list the equipment, including those that are specified in § 154.1240, that are available by contract or by a method described in § 154.1228(a). The owner or operator is not required, but may at their option, refer to the tables in Environmental Protection Agency regulations, 40 CFR 112, Appendix E, Section 10.0, Tables 6 and 7, to determine necessary response resources.

(d) The owner or operator of a facility that handles, stores, or transports animal fats or vegetable oils must ensure that the response resources in paragraph (c) of this section are able to effectively respond to an incident within the amount of time indicated in the following table, unless otherwise specified in § 154.1240:

	Tier 1 (hrs.)	Tier 2	Tier 3
Higher volume port area	6	N/A	N/A.
Great Lakes	12	N/A	N/A.
All other river and canal, inland, nearshore, and offshore areas	12	N/A	N/A.

(e) The owner or operator of a facility that handles, stores, or transports animal fats or vegetable oils must—

(1) List in the plan the personnel and equipment that the owner or operator will use to fight fires.

(2) If there is not enough equipment or personnel located at the facility, arrange by contract or a method described in § 154.1228(a), or through a cooperative agreement with public fire-fighting resources, to have the necessary personnel and equipment available to fight fires.

(3) Identify an individual located at the facility who will work with the fire department on fires, involving an animal fat or vegetable oil. The individual—

(i) Verifies that there are enough trained personnel and operating equipment within a reasonable distance to the incident to fight fires.

(ii) Can be the qualified individual defined in § 154.1020 or an appropriate individual located at the facility.

(f) For a fixed facility, except for facilities that are part of a non-transportation-related fixed onshore facility with a storage capacity of less than 42,000 gallons, the owner or operator must also ensure and identify, through contract or a method described in § 154.1228, response resources for an average most probable discharge, including—

(1) At least 1,000 feet of containment boom or two times the length of the longest vessel that regularly conducts operations at the facility, whichever is greater, and the means of deploying and anchoring the boom within 1 hour of the discovery of an incident. Based on site-specific or facility-specific information, the COTP may require the facility owner or operator to make available additional quantities of containment boom within 1 hour of an incident;

(2) Adequate sorbent material located at the facility;

(3) Oil recovery devices and recovered oil storage capacity capable of being at the incident's site within 2 hours of the discovery of an incident; and

(4) Other appropriate equipment necessary to respond to an incident involving the type of oil handled.

(g) For a mobile facility or a fixed facility that is part of a non-transportation-related onshore facility with a storage capacity of less than 42,000 gallons, the owner or operator must meet the requirements of § 154.1041, and ensure and identify, through contract or a method described in § 154.1228, response resources for an average most probable discharge, including—

(1) At least 200 feet of containment boom and the means of deploying and anchoring the boom within 1 hour of the discovery of an incident. Based on site-specific or facility-specific information, the COTP may require the facility owner or operator to make available additional quantities of containment boom within 1 hour of the discovery of an incident;

(2) Adequate sorbent material capable of being at the site of an incident within 1 hour of its discovery;

(3) Oil recovery devices and recovered oil storage capacity capable of being at incident's site within 2 hours of the discovery of an incident; and

(4) Other equipment necessary to respond to an incident involving the type of oil handled.

(h) The response plan for a facility that is located in any environment with year-round preapproval for use of dispersants and that handles, stores, or transports animal fats and vegetables oils may request a credit for up to 25 percent of the worst case planning volume set forth by subpart F of this part. To receive this credit, the facility owner or operator must identify in the plan and ensure, by contract or other approved means as described in § 154.1228(a), the availability of specified resources to apply the dispersants and to monitor their effectiveness. The extent of the credit for dispersants will be based on the volumes of the dispersants available to sustain operations at the manufacturers' recommended dosage rates. Other spill mitigation techniques, including

mechanical dispersal, may be identified in the response plan provided they are in accordance with the NCP and the applicable ACP. Resources identified for plan credit should be capable of being on scene within 12 hours of a discovery of a discharge. Identification of these resources does not imply that they will be authorized for use. Actual authorization for use during a spill response will be governed by the provisions of the NCP and the applicable ACP.

9. Add § 154.1240 to subpart H to read as follows:

§ 154.1240 Specific requirements for animal fats and vegetable oils facilities that could reasonably be expected to cause substantial harm to the environment.

(a) The owner or operator of a facility, classified under § 154.1216 as a facility that could reasonably be expected to cause substantial harm to the environment, must submit a response plan that meets the requirements of § 154.1035, except as modified by this section.

(b) The plan does not need to list the facility or corporate organizational structure that the owner or operator will use to manage the response, as required by § 154.1035(b)(3)(iii).

(c) The owner or operator must ensure and identify, by contract or a method described in § 154.1228, that the response resources required under § 154.1035(b)(3)(iv) are available for a worst case discharge.

Dated: June 21, 2000.

James M. Loy,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 00–16079 Filed 6–29–00; 8:45 am]

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Federal Register

Friday,
June 30, 2000

Part V

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 9, 14, 15, 31, and 52

Federal Acquisition Regulation; Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9, 14, 15, 31, and 52

[FAR Case 1999–010]

RIN 9000–AI40

Federal Acquisition Regulation; Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) published in the **Federal Register** at 64 FR 37360, July 9, 1999, a proposed rule for public comment related to contractor responsibility and costs incurred in legal and other proceedings. The comment period lasted 120 days. In response to the proposed rule, more than 1500 letters were received. As a result of the review of those responses, the Federal Acquisition Regulatory Council (FAR Council) has decided to publish a revised proposed rule.

DATES: Interested parties should submit comments in writing on or before August 29, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.1999–010@gsa.gov.

Please submit comments only and cite FAR case 1999–010 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 1999–010.

SUPPLEMENTARY INFORMATION:

A. Background

The CAAC and DARC published a proposed rule amending FAR Parts 9 and 31 in the **Federal Register** at 64 FR 37360, July 9, 1999, requesting comments from the public. The proposed rule attempted to clarify what constitutes a ''satisfactory record of integrity and business ethics'' for a federal contractor.

The comment period for the proposed rule closed on November 8, 1999. In response to the proposed rule, the CAAC and DARC received more than 1500 letters. After reviewing the comments, the FAR Council decided to republish the proposed rule with certain changes (as listed below). The FAR Council intends this revised proposal to clarify the existing requirement that federal contractors must have a satisfactory record of integrity and business ethics. They considered all of the public comments in preparing this revised proposal.

1. FAR Part 9, Contractor Responsibility.

a. *Integrity and business ethics.* The initial rule sought to clarify contractor responsibility considerations by adding examples of what may be considered ''an unsatisfactory record of integrity and business ethics.'' Specifically, it emphasized that contracting officers could regard a prospective contractor's lack of compliance with tax laws, or substantial noncompliance with labor laws, employment laws, environmental laws, antitrust laws, or consumer protection laws as indicating an unsatisfactory record of integrity and business ethics.

Many members of the public expressed concerns about the proposed rule. They suggested—

(1) The language in the rule was vague and subjective, raising a risk of abuse, and perhaps leading to inconsistent application of law;

(2) The proposed rule could have the effect of shifting responsibility for reviewing and giving effect to violations of law from agency debarring officials to contracting officers, placing an undue burden on contracting officers;

(3) The proposal seemed more of a punitive measure than one designed to protect the Government's interest;

(4) The proposal appeared to permit contracting officers to give undue weight to unsubstantiated allegations;

(5) The proposed rule appeared to modify the causes for debarment; and

(6) An Initial Regulatory Flexibility Analysis should be performed, because the final rule could have a significant economic impact on a substantial number of small entities.

After considering all of these comments, the FAR Council is replacing the initial proposal with two separate proposed rules. The present FAR case represents a revised proposed rule pertaining to contractor responsibility and certain cost principles. It includes an Initial Regulatory Flexibility Analysis (*see* Paragraph B., Regulatory Flexibility Act), which supports a conclusion that the rule is not likely to have a significant economic impact on a substantial number of small entities. The FAR Council plans to open a new FAR case addressing the issue of debarment responding to the public's comments on that subject.

In the present FAR case, the FAR Council has revised the proposed rule in a number of ways:

(1) New language would clarify FAR 9.103 to reflect that contracting officers should coordinate with agency legal counsel on all non-responsibility determinations based upon integrity and business ethics.

(2) Additional language would modify FAR 9.104–1(d) to confirm that satisfactory compliance with federal laws including tax laws, labor and employment laws, environmental laws, antitrust laws, and consumer protection laws would be part of a satisfactory record of integrity and business ethics.

(3) A revised section clarifies that in assessing contractor responsibility, contracting officers may consider all relevant credible information, but should give greatest weight to decisions within the past three years preceding the offer as follows:

Convictions of or civil judgments rendered against the prospective contractor for—

(a) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State, or local) contract or subcontract;

(b) Violation of Federal or State antitrust statutes relating to the submission of offers;

(c) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;

(d) Any other Federal or State felony convictions or pending Federal or State felony indictments; and

(e) Federal court judgments in civil cases brought by the United States against the contractor.

Federal decisions by Federal Administrative Law Judges or Federal Administrative Judges and adjudicatory decisions, orders, or complaints issued by any federal agency, board, or commission, indicating the contractor has been found to have violated Federal tax, labor and employment, antitrust, or consumer protection law.

(4) All offerors must certify to contracting officers whether within the past three years, they have been convicted of any felonies (or have any felony indictment currently pending against them) arising from any Federal tax, labor and employment, environmental, antitrust, or consumer protection laws, had any adverse court judgments in civil cases against them arising from any Federal tax, labor and employment, environmental, antitrust, or consumer protection laws in which the United States brought the action, or been found by a Federal Administrative Law Judge, Federal Administrative Judge, agency, board or commission to have violated any Federal tax, labor and employment, environmental, antitrust, or consumer protection law. Before publication of a final rule, the FAR Council would need to obtain approval of this new certification requirement from the Administrator for Federal Procurement Policy in accordance with 41 U.S.C. 425(c)(1)(B).

(5) New language would modify FAR 14.404–2(i) and 15.503(a)(1), which provide for notification to unsuccessful bidders and offerors promptly after a non-responsibility determination is made. The modification would ensure that if non-responsibility is the basis for rejection of the bid or elimination of an offer from the competition, then the contracting officer must provide the reasons for the non-responsibility determination in the notification.

The FAR Council intends these changes to the initial proposed rule to clarify the longstanding requirement that federal contractors have a ''satisfactory record of integrity and business ethics.'' It solicits comments on whether or not this proposal is successful in this regard. Comments on whether the revised language in 9.104–1(d) and 9.104–3(c) sufficiently clarifies for contracting officers and for federal contractors what constitutes a ''satisfactory record of integrity and business ethics,'' and what additional or alternative language would be helpful in this regard would be particularly useful.

b. *Workplace practices.* The initial proposal included changes requiring federal contractors to maintain such workplace practices as, training, worker retention and legal compliance to assure a skilled, stable and productive workforce. After reflecting further on this subject, the FAR Council has decided not to proceed with such language. The general responsibility standards in FAR 9.104–1(e), which require the prospective contractors to have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them, already cover this requirement adequately.

2. Cost Principle Changes

The initial proposed rule would have revised FAR Part 31 to make unallowable those costs that a contractor incurs related to—

1. Influencing an employee's decision regarding unionization (FAR 31.205–21, Labor relations costs); and

2. Any judicial or administrative proceeding brought by ''the Government,'' if there is a finding that the contractor violated a law or regulation (FAR 31.205–47, Costs related to legal and other proceedings).

The CAAC and DARC received comments from 135 respondents on this portion of the proposed rule. After careful consideration, the FAR Council has decided to make the following changes:

a. *FAR 31.205–21, Labor relations costs.* A number of respondents indicated that the term ''influencing'' may be too vague, leading to difficulty in identifying these types of costs. The FAR Council has decided to revise paragraph (b) by substituting the phrase ''assist, promote, or deter'' for the term ''influencing'' since this phrase has been used in neutrality provisions of cost-based Federal programs for years (*e.g.*, 29 U.S.C. 1553(c)(1), 29 U.S.C. 2931(b)(7), 42 U.S.C. 12634(b)(1) and 42 U.S.C. 9839(e)).

b. *FAR 31.205–47, Costs related to legal and other proceedings.* A number of respondents suggested that the proposed rule had a number of inconsistencies—

(1) The proposed language at FAR 31.205–47(b)(3) was inconsistent with the introductory language at FAR 31.205-47(b). Paragraph (b)(3) appeared to apply only to proceedings brought by the Federal Government, but the introductory language seemed to refer to proceedings brought by State, local, or foreign governments as well. The FAR Council has resolved the ambiguity by proposing that the costs should be unallowable if incurred in connection with any such Federal, State, local or foreign government proceeding. Therefore, there is no change to the existing regulations.

(2) The proposed language in paragraph (b)(3) appeared inconsistent with the language in paragraph (b)(2). Paragraph (b)(2), currently in the FAR and unchanged in the initial proposed rule, disallows costs incurred in connection with a civil or administrative proceeding for violation of, or failure to comply with, a law or regulation where there is a finding of contractor liability involving fraud or the imposition of a monetary penalty. Paragraph (b)(3) made costs unallowable if there was a finding of a violation of a law or regulation regardless of whether the violation involved fraud or the contractor was assessed a monetary penalty. Although the paragraphs are intended to be consistent, paragraph (b)(3) appeared to disallow some costs allowed under paragraph (b)(2). To remedy this inconsistency, the FAR Council proposes to eliminate the language at paragraph (b)(3) and expand the scope of paragraph (b)(2) to include findings in any civil or administrative proceeding that the contractor violated, or failed to comply with, any law or regulation. Since paragraph (b)(2) no longer refers to allegations of fraud, the FAR Council has eliminated the definition of ''fraud'' in paragraph (a).

Executive Order 12866

The FAR Council intends to clarify existing regulations concerning the assessment of contractor responsibility. It does not regard this rule as a significant rule subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. It also does not regard this rule as a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The FAR Council has examined whether this revised proposal would have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* In commenting on the initial proposal, some small businesses suggested that the clarification regarding integrity and business ethics might result in more adverse responsibility determinations, and the denial of contracts to small businesses.

The FAR Council has prepared an Initial Regulatory Flexibility Analysis (IRFA) and will provide it to the Chief Counsel for Advocacy at the Small Business Administration. The analysis supports a conclusion that this rule would not likely have a significant economic impact on a substantial number of small entities. The analysis is summarized below. There was also a concern that the proposed rule would change the Certificate of Competency program which is the process through which small businesses can challenge contracting officers' decisions about contractor responsibility. Nothing in the initial proposal nor this revised proposal changes the Certificate of Competency program.

The objective of the proposed rule is to make it clear that the contracting officer should consider violations of federal law in determining whether a prospective contractor has an unsatisfactory record of integrity and business ethics. The legal basis for the proposed rule is 41 U.S.C. 253b and 10 U.S.C. 2305(b), which require the Government to award contracts to ''responsible sources''; 41 U.S.C. 403 defines ''responsible source'' to be in part, a prospective contractor who has a record of integrity and business ethics. The rule will affect both large and small businesses interested in participating in Federal Government procurement. It is estimated that approximately 171,000 small entities will be affected by this rule. The proposed rule will add a new certification requiring prospective contractors to certify whether they have been convicted of any felonies (or have any felony indictment currently pending against them) arising from any Federal tax, labor and employment, environmental, antitrust, or consumer protection laws, had any adverse court judgments in civil cases against them arising from any Federal tax, labor and employment, environmental, antitrust, or consumer protection laws in which the United States brought the action, or been found by a Federal Administrative Law Judge, Federal Administrative Judge, agency, board or commission to have violated any Federal tax, labor and employment, environmental, antitrust, or consumer protection law. The certification will be required of all businesses, including small businesses, interested in submitting offers in response to solicitations that exceed the simplified acquisition threshold (see Section C).

The contracting officer will still be required to forward non-responsibility determinations for small entities to the Small Business Administration in accordance with the certificate of competency program. Nothing in that requirement has been changed by this rule.

The proposed change to the FAR pertaining to Part 31 cost principles is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principles contained in this rule. In fiscal years 1998 and 1999 approximately ½ of 1 percent of contracts awarded to small entities were subject to the cost principles. Therefore, the Initial Regulatory Flexibility Analysis that has been performed does not address the cost principles.

A copy of the IRFA may be obtained from the FAR Secretariat. The CAAC and DARC will consider comments from small entities concerning the affected FAR parts 9, 14, 15, 31, and 52 in accordance with 5 U.S.C. 610. The FAR Council will also consider comments on its conclusion that this regulation is not likely to have a significant impact on a substantial number of small entities. Comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1999–010), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the FAR changes to Parts 9 and 52 increase the information collection requirements that have been approved by the Office of Management and Budget (OMB) under OMB Control Number 9000–0094. OMB has currently approved an annual reporting burden of 91,667 hours based on 1,100,000 respondents and 1,100,000 annual responses. In preparing the revised proposal, the FAR Council has reviewed the number of likely respondents. It notes that the average respondent submits numerous responses throughout the year. It now estimates that the annual reporting burden for OMB Control Number 9000–0094 applies to only 89,995 respondents, of which approximately 50,000 are affected by the new certification requirement. The other 39,995 respondents are subcontractors, responding to the prime contractor regarding suspension and debarment only. It further estimates that the addition of this new certification requirement will increase the total burden hours by 515,000 hours, for a new total of 606,667 hours. This assumes an estimate that the additional certification will take an average of 3 hours each for 50,000 initial responses and .5 hours each for 450,000 subsequent responses that year, for a composite average of .75 hours per response. In addition, the FAR Council estimates that in 50,000 cases the contracting officer will request additional information from the respondent in accordance with FAR 9.408(a), requiring an additional 4 hours each for 30,000 initial responses, and 1 hour each for each of 20,000 subsequent responses for a composite average of 2.8 hours per response.

The revised annual reporting burden is estimated as follows:

Respondents: 89,995.

Responses per respondent: 12.8.

Total annual responses: 1,150,000.

Average hours per response: [1] 0.528 hours.

Total burden hours: 606,667 hours.

The Paperwork Reduction Act does not apply to the proposed changes to FAR Part 31, Contract Cost Principles and Procedures, because these changes do not impose information collection requirements that require Office of Management and Budget approval under 44. U.S.C. 3501, *et seq.*

[1] Average hours per response is calculated by dividing total burden hours by total annual responses.

D. Request for Comments Regarding Paperwork Burden

Please submit comments, including suggestions for reducing this burden, not later than August 29, 2000 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503.

The FAR Council particularly invites public comments on—

- Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility;
- Whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

The commenter may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVR), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control Number 9000–0094, FAR Case 1999–010, Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings, in all correspondence.

List of Subjects in 48 CFR Parts 9, 14, 15, 31, and 52

Government procurement.

Dated: June 22, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 9, 14, 15, 31, and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 9, 14, 15, 31, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 9—CONTRACTOR QUALIFICATIONS

2. Amend section 9.103 to add a new sentence after the second sentence in paragraph (b) to read as follows:

9.103 Policy.

* * * * *

(b) * * * Contracting officers should coordinate non-responsibility

determinations based upon integrity and business ethics with legal counsel (see 9.104–1(d)). * * *

* * * * *

3. Revise paragraph (d) of section 9.104–1 to read as follows:

9.104–1 General standards.

* * * * *

(d) Have a satisfactory record of integrity and business ethics including satisfactory compliance with federal laws including tax laws, labor and employment laws, environmental laws, antitrust laws, and consumer protection laws. (See 9.104–3(c).)

* * * * *

4. In section 9.104–3, redesignate paragraphs (c) and (d) as (d) and (e) respectively; and add a new paragraph (c) to read as follows:

9.104–3 Application of standards.

* * * * *

(c) Integrity and business ethics. In making a determination of responsibility based upon integrity and business ethics (see 9.104–1(d)), contracting officers may consider all relevant credible information. Contracting officers should give greatest weight to decisions within the past three years preceding the offer as follows—

(1) Convictions of or civil judgments rendered against the prospective contractor for:

(i) Commission of Fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) contract or subcontract;

(ii) Violation of Federal or State antitrust statutes relating to the submission of offers;

(iii) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;

(iv) Any other Federal or State felony convictions or pending Federal or State felony indictments; and

(v) Federal court judgments in civil cases brought by the United States against the contractor.

(2) Federal decisions by Federal Administrative Law Judges or Federal Administrative Judges and adjudicatory decisions, orders, or complaints issued by any Federal agency, board, or commission, indicating the contractor has been found to have violated Federal tax, labor and employment, antitrust, or consumer protection law.

* * * * *

PART 14—SEALED BIDDING

5. Revise paragraph (i) of section 14.404–2 to read as follows:

14.404–2 Rejection of individual bids.

* * * * *

(i) The contracting officer must reject low bids received from concerns determined to be not responsible pursuant to Subpart 9.1 (but if a bidder is a small business concern, see Subpart 19.6 with respect to certificates of competency). The contracting officer must promptly notify the bidder of the non-responsibility determination and the basis for it.

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

6. Revise paragraph (a)(1) of section 15.503 to read as follows:

15.503 Notifications to unsuccessful offerors.

(a) *Preaward notices*—(1) *Preaward notices of exclusion from competitive range.* The contracting officer must notify offerors promptly in writing when their proposals are excluded from the competitive range or otherwise eliminated from the competition. The notice must state the basis for the determination and that a proposal revision will not be considered. When the exclusion or elimination of a proposal is based on a non-responsibility determination, the contracting officer must state the basis for the determination.

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

7. Revise section 31.205–21 by designating the existing paragraph as paragraph (a) and adding paragraph (b) to read as follows:

31.205–21 Labor relations costs.

* * * * *

(b) Costs incurred for activities that assist, promote, or deter unionization are unallowable.

8. Amend section 31.205–47 in paragraph (a) by removing the definition ''Fraud''; and revising paragraph (b)(2) to read as follows:

31.205–47 Costs related to legal and other proceedings.

* * * * *

(b) * * *

(2) In a civil or administrative proceeding, a finding that the contractor violated, or failed to comply with, a law or regulation;

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

9. In section 52.209–5—

a. Revise the date of the clause;

b. In paragraph (a)(1)(i)(B), remove ''a 3-year'' and add ''the three-year'' in its place; and remove ''and'' at the end of the paragraph;

c. In paragraph (a)(1)(i)(C), at the end of the paragraph remove the period and add ''; and'' in its place; and

d. Add a new paragraph (a)(1)(i)(D) to read as follows:

52.209–5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.

* * * * *

Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (Date)

(a) * * *

(1) * * *

(i) * * *

(D) The offeror, aside from the offenses enumerated in subdivision (a)(1)(i)(A), (B), and (C) of this provision has ☐; has not ☐; within the past three years, been convicted of any felonies (or has any felony indictment currently pending against them) arising from any Federal tax, labor and employment, environmental, antitrust, or consumer protection laws, had any adverse court judgments in civil cases against them arising from any Federal tax, labor and employment, environmental, antitrust, or consumer protection laws in which the United States brought the action, or been found by a Federal Administrative Law Judge, Federal Administrative Judge, agency, board or commission to have violated any Federal tax, labor and employment, environmental, antitrust, or consumer protection law. If the respondent has answered ''has'' to the above question, please explain the nature of the violation and whether any fines, penalties, or damages were assessed.

* * * * *

10. In section 52.212–3—

a. Revise the date of the clause;

b. Revise the introductory text of paragraph (h);

c. In paragraph (h)(1), remove '', and'' and add '';'' in its place; and

d. In paragraph (h)(2), remove ''within a'' and add ''within the'' in its place; and at the end of the paragraph, remove the period and insert ''; and''; e. Add a new paragraph (h)(3) to read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (Date)

* * * * *

(h) Certification Regarding Debarment, Suspension or Ineligibility for Award (Executive Order 12549).

(Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that—

* * * * *

(3) The offeror has ☐; has not ☐; within the past three years, been convicted of any felonies (or has any felony indictment currently pending against them) arising from any Federal tax, labor and employment, environmental, antitrust, or consumer protection laws, had any adverse court judgments in civil cases against them arising from any Federal tax, labor and employment, environmental, antitrust, or consumer protection laws in which the United States brought the action, or been found by a Federal Administrative Law Judge, Federal Administrative Judge, agency, board or commission to have violated any Federal tax, labor and employment, environmental, antitrust, or consumer protection law. If the respondent has answered ''has'' to the above question, please explain the nature of the violation and whether any fines, penalties, or damages were assessed.

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[FR Doc. 00–16266 Filed 6–29–00; 8:45 am]

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Part VI

Department of Housing and Urban Development

Funding Availability for the Economic Development Initiative (EDI) Community Empowerment Fund (CEF) Pilot; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4596–N–01]

Notice of Funding Availability for the Economic Development Initiative (EDI) Community Empowerment Fund (CEF) Pilot

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability.

SUMMARY: *Purpose of the Program.* This Notice of Funding Availability (NOFA) announces the availability of $10 million in FY–1998 EDI funds to stimulate economic development by local governments and private sector parties. HUD desires to see the EDI funds made available under this NOFA and the related Section 108 funds used to finance loans to businesses for eligible economic development projects that will provide near-term results and demonstrable economic benefits, such as job creation, needed business services and facilities in underserved areas, and increases in the local tax base. Under this NOFA (in contrast to previous EDI NOFAs), the use of EDI funds is specifically limited to the funding of a common debt service/loan loss reserve to enhance the security of the related obligations guaranteed by HUD under Section 108 of the Act (as defined in Section III(A)(1) below). An EDI grant under this NOFA must be used in conjunction with a new Section 108-guaranteed loan commitment, at a minimum ratio of at least $1 of EDI funds for every $7 of new section 108 proceeds used.

Available Funds. $10 million in funds appropriated for FY–1998 is available for EDI grants under this NOFA.

Eligible Applicants. Eligible applicants are Community Development Block Grant entitlement units of general local government and non-entitlement units of general local government eligible to receive loan guarantees under 24 CFR part 570, subpart M. Urban counties as defined in 24 CFR 570.3 and 570.307 may apply for funding, but units of general local government which participate in the Urban County may not submit an application independent of the Urban County.

Application Deadline. August 18, 2000.

Match. None.

ADDITIONAL INFORMATION:

I. Application Due Date, Further Information, and Technical Assistance

Application Due Date. Please submit your completed applications (one original and two copies) on or before 12:00 midnight, Eastern time, on August 18, 2000, to the address shown below.

Address for Submitting Applications. To HUD Headquarters. Submit your completed application (an original and one copy) to: Processing and Control Unit, Room 7251, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, Attention: EDI Grant—CEF Pilot, by mail or hand delivery. As noted below, an additional copy of the application is requested to be sent to the appropriate HUD Field Office. Timeliness of submission of and EDI Grant-CEF Pilot application, however, is determined by receipt of the original application and one copy to HUD Headquarters.

There is no application kit for this NOFA. All information and material required to submit an application for funding under this NOFA are included in the NOFA and the appendices to the NOFA.

To the Appropriate CPD Field Office. At the same time you submit your application to HUD Headquarters, you must submit an additional copy of your application to the Community Planning and Development Division of the appropriate HUD Field Office for your jurisdiction.

When submitting your application, please refer to EDI–CEF Pilot, and include your name, mailing address (including zip code) and telephone number (including area code).

For Further Information and Technical Assistance. You may contact Paul Webster of the Office of Economic Development and Empowerment Service, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7180, Washington, DC 20410; telephone (202) 708–1871 (this is not a toll-free number). Persons with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

The Section 108 Loan Guarantee program is not a competitive program and therefore is not subject to the HUD Reform Act. HUD staff will be available to provide advice and assistance to develop your Section 108 loan applications.

Satellite Broadcast. HUD will hold an information broadcast via satellite for potential applicants to learn more about the program and preparation of the application. For more information about the date and time of the broadcast, you should consult the HUD web site at http://www.hud.gov.

II. Amount Allocated

A maximum of $10 million is available for the EDI grants under this NOFA as appropriated in the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1998 (Pub. L. 105'65, approved October 27, 1997) (FY 1998 HUD Appropriations Act) and set aside for purposes of the development of the CDBG Risk Reduction Pool (hereafter, the CEF Pilot) as briefly described in the FY 1998 NOFA for Economic Development and Empowerment Programs (see Economic Development Initiative Section I(D) at 63 FR 23900).

III. Program Description; Eligible Applicants; Eligible Activities

(A) *Program Description.* For purposes of this NOFA, the EDI funds awarded will be used solely to fund a common debt service/loan loss reserve account to enhance the security of related obligations guaranteed by HUD under Section 108 of the Act (as defined in Section III(A)(1) below). An EDI grant must be used in conjunction with a new Section 108 guaranteed loan commitment as more fully described later in this document. Both Section 108 loan guarantee proceeds and EDI grant funds are initially made available by HUD to public entities approved for assistance pursuant to this NOFA. Each such public entity will use the Section 108 loan proceeds to make loans to businesses to finance eligible economic development projects and will assign its rights under the related loan documents to a pooling entity (described in this NOFA as the ''CEF Pilot''). Concurrently, the public entity will provide EDI funds to the CEF Pilot to be deposited into a common debt service/loss reserve. Pursuant to 31 U.S.C. 1552, all EDI funds awarded under this NOFA must be expended by September 30, 2005. Consequently, all business loans made with related section 108 proceeds must be closed and taken into the pool administered by the CEF Program Manager by September 30, 2005. EDI funds not so expended by September 30, 2005 may be recaptured by HUD. HUD reserves the right to set an earlier date for such expenditures in the EDI and/or Section 108 loan guarantee documents.

(1) *Definitions.* Terms used in this NOFA have the meanings given in 24 CFR part 570 unless otherwise specified.

Act means Title I, Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5301-*et seq.*).

Application means a single set of documents submitted by an eligible

applicant for EDI grant funds accompanied by a Section 108 loan guarantee request in accordance with the provisions of this NOFA to finance a economic development projects.

Business loan means a loan made with Section 108 proceeds by a participating community selected under this NOFA in accordance with the terms of this NOFA for an eligible economic development project.

CDBG funds means those funds collectively defined at 24 CFR 570.3, including grant funds received pursuant to section 108(q) of the Act and this NOFA.

CEF Pilot means a not-for-profit limited liability company (''LLC'') that is organized pursuant to Delaware law to serve as the pooling entity to hold and administer business loans made by applicants selected under this NOFA.

CEF Program Manager means the contractor selected by HUD to manage the CEF Pilot. The contractor at this time and its team of subcontractors are described in Section III(A)(5)(h) of this NOFA.

Economic Development Initiative (EDI) means the competitive award of economic development grant assistance under section 108(q) of the Act, as authorized by Section 232 of the Multifamily Housing Property Disposition Reform Act of 1994 (Pub.L. 103–233, approved April 11, 1994).

Economic development project means a loan to a for-profit business to finance a project that is eligible under the Act and under 24 CFR 570.703(i)(1)–570.203(b), and that increases economic opportunity for persons of low-and moderate-income or that stimulate or retain businesses or jobs or that otherwise lead to economic revitalization.

Empowerment Zone or Enterprise Community means an urban area so designated by the Secretary of HUD pursuant to 24 CFR part 597 or part 598, or a rural area so designated by the Secretary of Agriculture pursuant to 7 CFR part 25, subpart B.

Strategic Plan means a strategy developed and agreed to by the nominating local government(s) and State(s) and submitted in partial fulfillment of the application requirements for an Empowerment Zone or Enterprise Community designated pursuant to 24 CFR part 597 or part 598.

(2) *Background.* (a) HUD has multiple programs which are intended to stimulate and promote economic and community development. Primary among HUD's resources are the Community Development Block Grant (CDBG) program and the Section 108 loan guarantee program.

(b) The CDBG program provides grant funds (approximately $4.240 billion in FY 2000) by formula to eligible local governments (either directly or through States) to carry out community and economic development activities. In general, the Section 108 loan guarantee program provides local governments with a source of financing for economic development, public facilities and other eligible physical development projects. More specifically, proceeds from loans guaranteed under section 108 can be used to make loans to third parties (*e.g.,* for loans to for-profit businesses where such assistance is appropriate to carry out economic development projects), as described in this NOFA.

HUD is authorized pursuant to Section 108 to guarantee notes issued by CDBG entitlement communities, and non-entitlement units of general local government eligible to receive funds under the State CDBG program. The Section 108 program is subject to the regulations of 24 CFR part 570 applicable to the CDBG program, as described in 24 CFR part 570, subpart M. EDI grants must support Section 108 loan guarantees as generally described in this NOFA.

(c) For FY 2000, the Section 108 program is authorized at $1.261 billion in loan guarantee authority. The full faith and credit of the United States will be pledged to the payment of all guarantees made under Section 108. Under this program, communities (and States, if applicable) are required by the Act to pledge their continuing CDBG allocations as security for loans guaranteed by HUD. However, for purposes of this NOFA, the CEF Pilot will be responsible, to the extent of reserve funds available, for making all payments on the Section 108 loans from amounts it collects on the business loans and from the loss reserve created from the EDI funds contributed by participating communities. Only if such reserves are exhausted will a community (or State, if applicable) be required to use CDBG funds to pay the amount of any payment then due on its related Section 108 obligation and not paid by the LLC from reserves.

(3) *EDI Program.* The EDI program was enacted in 1994 and is intended to complement and enhance the Section 108 Loan Guarantee program. A purpose of EDI grant funds is to reduce grantees' potential loss of future CDBG allocations:

(a) By strengthening the economic feasibility of the projects financed with Section 108 funds (and thereby increasing the probability that the project will generate enough cash to repay the guaranteed loan);

(b) By directly enhancing the security of the section 108-guaranteed obligations; or

(c) Through a combination of these or other risk mitigation techniques.

(4) *Purpose of this EDI NOFA.* For purposes of this NOFA, HUD is requiring EDI and related Section 108 funds to be used *solely* to finance business loans meeting the criteria described in Section III(A)(5) of this NOFA. HUD expects such loans to provide near-term results and demonstrable economic benefits, such as job creation, area benefit through improved business services and facilities in underserved areas, and increases in the local tax base. The use of EDI funds provided under this NOFA is specifically limited to enhancing the security of related section 108-guaranteed obligations issued by eligible applicants selected under this NOFA. When a business loan eligible under this NOFA is approved for inclusion in the common security pool, the participating community will be required to authorize the requisite EDI contribution in connection with that business loan to be paid into a common debt service/loan loss reserve interests in which will serve as part of the security for the related section 108-guaranteed obligations. The process of underwriting and approval of the business loans, the determination of the amount of the related EDI contributions, and how the business loan pool and related debt service/loan loss reserve will be set up and administered is described in Section III(A)(5) of this NOFA.

The CEF Pilot pooled business loan and security structure described in this NOFA for EDI-Section 108 financing is intended to supplement, but not to replace, the regular EDI and Section 108 loan guarantee programs. If funds are appropriated for EDI in the future, HUD would expect, subject to Congressional direction, to continue both the CEF Pilot financing structure and the regular EDI and Section 108 programs.

(5) *Description of the CEF Pilot.* The CEF Pilot is designed to mitigate the risk of loss to a community's CDBG program inherent in making business loans funded by Section 108 loans. The CEF Pilot combines modern private sector financial engineering with privatization of much of the administration of business loans.

(a) How the CEF Pilot will operate. The CEF Pilot will hold and service the Section 108 qualifying business loans that are placed into the CEF Pilot by participating communities. The key components of the CEF Pilot are: the use of EDI grant funds to provide a pooled cash reserve to cushion against losses

resulting from defaults on business loans funded through the Section 108 program; and pooling of credit risk associated with the business loans.

In return for the assignment of business loan assets to the CEF Pilot, the community receives an interest in the CEF Pilot's assets—the EDI cash reserve, payments from the business borrowers, and potential investment earnings on the CEF Pilot's available cash. The CEF Pilot is designed to provide a flow of cash payments that will effectively over-collateralize the community's related liabilities under its corresponding Section 108 note or notes. To the extent of available cash, the CEF Pilot will make payments on the Section 108 note(s) for each participating community and deposit any excess payment received from the business borrower into the cash reserve account. The cash reserve account will absorb business loan losses, until exhausted. At the end of the CEF Pilot, participating communities will receive a distribution of any remaining cash in the cash reserve account. This distribution will be adjusted in proportion to the losses experienced by the pool on loans the communities have placed in the pool.

In addition to the community building achieved from strengthening new and expanding businesses through Section 108 financing, communities will receive substantial benefits from participating in the CEF Pilot. They include:

- Professional private sector underwriting and loan pricing
- Significantly reduced Section 108 loss exposure due to:
  - Professional assessment of loan-by-loan credit risk
  - EDI grant funded cash reserve to absorb losses, until exhausted
  - Modern servicing techniques
  - Pooling of credit risk
  - Simplified, streamlined Section 108 and EDI approvals
  - Relief from the administrative burden of servicing Section 108 Business Loans
  - Potential cash distribution of any excess cash reserve to participating communities on dissolution of the CEF Pilot, adjusted for losses on loans the community placed into the pool.

HUD will continue its full faith and credit guarantee of timely payment of principal and interest to the investors that provide the Section 108 funding to municipalities and their constituents through the standard interim financing and underwritten public offering processes. Participating communities will continue to be the borrowers from the Section 108 program and they will continue to secure that borrowing with a pledge to HUD of CDBG grants. Thus, communities should note that HUD cannot assure that CDBG funds will never have to be used for Section 108 debt service. However, the CEF Pilot's cash reserve and its modern pooling and credit enhancement techniques should virtually eliminate the possibility of catastrophic losses to communities as a result of borrowing under Section 108. Moreover, as noted above, any excess cash in the reserve account will be distributed to the participating communities when the CEF Pilot wraps up its existence.

As discussed below, the use of professional and centralized servicing and administration of the Section 108 business loans accepted into the CEF Pilot will address any payment delinquencies efficiently and mitigate the likelihood of a business loan default. In addition, any default or workout situation will be handled by the CEF Program Manager directly with the business borrower and not with the participating community.

(b) Types of loans that the CEF Pilot will accept. Business loans accepted by the CEF Pilot must meet the specific requirements of both HUD and the CEF Program Manager. The streamlined application and approval process is summarized in the section titled ''The CEF Pilot Business Loan Underwriting and Pricing Process'' below. Each business loan must comply with the program requirements described in Section IV of this NOFA. Each business loan will also be documented and secured using standard loan and security instrument forms to be supplied by the CEF Program Manager, customized as necessary for settlement of the business loan.

The separate CEF Pilot requirements are stated in the CEF Pilot Business Loan Underwriting and Pricing Guidelines (the ''underwriting guidelines'') that are summarized below (see section III(C)(5)(c)(i) of this NOFA for availability to applicants of the underwriting guidelines). Most notable among these underwriting requirements is the type of collateral. The primary security must be a recorded lien on real estate owned or leased by the recipient of the business loan. HUD expects that most of the loans in the pool to be set up pursuant to this NOFA will be secured solely by liens on real estate. However, liens on ''hard'' physical assets such as machinery and equipment will be considered as supplemental security, which will be closely scrutinized as to value, useful life, and general suitability as security. Only the collateral and not the ''purpose'' of the Section 108 business loan will determine its acceptability. Thus, for example, even if a business borrower intends to use the loan proceeds for expanding its inventory, the business loan may be approved for the CEF Pilot if the borrower provides acceptable real property collateral.

Loans originated by communities in connection with business borrowers' development, construction and rehabilitation projects can be pre-approved. The Section 108 interim lending facility can be utilized for the construction stage financing. The CEF Pilot, subject to the completion of the construction work, will accept permanent financing of such loans.

The minimum size for a single business loan to be included in the pool to be set up pursuant to this NOFA is two hundred thousand dollars ($200,000). The maximum business loan size is two million dollars ($2,000,000). Without prior approval from both HUD and the CEF Program Manager, no single community can place business loans into the CEF Pilot totaling more than ten million dollars ($10,000,000). It is anticipated that a participating community will use Section 108 guaranteed loan funds to make multiple business loans.

Loan terms may range from fifteen to twenty years with loan amortization schedules not to exceed thirty years. Moreover, the cumulative scheduled principal and interest payments on the corresponding Section 108 note may not exceed the cumulative scheduled monthly amortization on the business loan or loans for the same period.

The interest rate on each business loan will exceed the interest rate on the community's corresponding Section 108 obligation. The amount of such ''spread'' depends upon the credit risk presented by the particular loan as set forth in the underwriting guidelines, and will be established by the CEF Program Manager.

To defray start-up expenses, the CEF Pilot will assess an ''acceptance fee'' on all business loans when the loan proceeds are remitted to the business borrower. (See Section III(A)(5)(g) which addresses fees and expenses.) The business borrower may pay the acceptance fee at the closing of the project loan, or the community may elect to capitalize the amount of this fee into the Section 108 note and the principal amount of the business loan.

(c) The CEF Pilot Business Loan Underwriting and Pricing Process. The CEF Pilot will utilize the uniform underwriting guidelines for all business loans considered for contribution into the CEF Pilot. The necessary steps to

take a project from its origination to underwriting and then to acceptance by the CEF Pilot involve three major processes: qualification and application, underwriting and due diligence, and commitment and closing.

(i) Qualification and Application. The first step in the qualification and application process is the pre-qualification and training of local loan originators/underwriters selected by the CEF Program Manager. The training process will also include training for the participating communities with regard to the CEF program and underwriting guidelines. An integral component of the underwriting guidelines is the CEF pricing model (the ''pricing model'').

(Note: The CEF Pilot underwriting manual, including underwriting guidelines, and related documents will be available from HUD Headquarters upon request, to the extent they are completed by the CEF Program Manager and approved by HUD. Please contact the HUD office identified under ''For Further Information and Technical Assistance under Section I of the NOFA.)

The local loan originators/underwriters will initiate the application process and utilize the CEF Pilot underwriting and pricing guidelines to ''size'' and price the business loans. The pricing model will determine the optimal loan terms, applicable risk tier of the business loan and the corresponding amount of EDI or other funds required for the cash reserve.

If a business loan successfully passes the initial review by the local originator/underwriter, the CEF Pilot's central underwriter (identified below) will conduct a preliminary review of the efforts of the local originator/underwriter and determine if the business loan is congruent with the type and quality of assets to be contributed to the CEF Pilot. If necessary, the central underwriter will revise the preliminary pricing and initial required reserve amount as appropriate and provide the potential project with indicative loan terms.

In parallel, the HUD Field Office will review the proposed project (not the CEF pricing) for compliance with Section 108 program requirements. If the local HUD office approves the proposed project, Section 108 funds are made available to the community to fund the business loan. It is important to highlight the separation of roles: the community and HUD will continue to review projects for compliance with the various requirements of Section 108, while the CEF Program Manager and its team will review business loans for compliance with the underwriting criteria of the CEF Pilot.

The final step in this initial process is for the community or the local originator/underwriter to prepare and issue the standard CEF Pilot Loan Application to the business borrower. If the business borrower elects to execute the loan application, the business borrower will be charged an application fee. (See Section III(C)(5)(g) for a discussion of fees.) The estimated timeframe for the steps involved in qualification and application process is five to seven business days.

(ii) Underwriting and Due Diligence. The next process is formal underwriting and due diligence. Once the business borrower executes the formal application, the community engages the pre-qualified and trained local originator/underwriter to initiate formal underwriting of the project under consideration. The local originator/underwriter processes the loan application and underwrites the proposed transaction using the CEF Pilot Underwriting Manual. The local originator/underwriter maintains close contact with the CEF Pilot central underwriter so that any underwriting issues are identified and addressed as early in the process as possible. The local originator/underwriter will document its conclusion in a Loan Recommendation Memorandum. This memorandum (a spreadsheet-based template) will document the local originator/underwriter's compliance with the underwriting guidelines, as well as document the local originator/underwriter's assumptions and argument for the conclusion that the loan be either approved, approved subject to specific conditions, or rejected. The local originator/underwriter will make every effort to present the case subject to the least possible number of closing conditions.

The central underwriter then reviews the loan recommendation memorandum, with all pertinent supporting documentation and reports. The central underwriter arranges for a loan committee meeting via telephone conference. The loan committee is composed of experts from the CEF Program Manager's contractor team. In this meeting, the local originator/underwriter will present and defend its recommendation. The meeting will culminate with one of the following from the central underwriter: concurrence; concurrence subject to revisions; or rejection of the local originator/underwriter's recommendation. The central underwriter will have the right to reject any proposed business loan based on its determination that the loan presents an undue risk to the overall pooled loan portfolio. Concurrence or rejection by the central underwriter will be documented by a Loan Approval/Denial Letter summarizing the loan terms as approved or revised, along with any conditions to its approval or advice of its denial. In the case of an approved business loan, this document obligates the CEF Pilot to accept the funded business loan if all conditions to approval are satisfied. The estimated timeframe for the formal underwriting and due diligence process is twenty five to thirty five business days.

(iii) Commitment and Closing. After completion of formal underwriting, the central underwriter prepares a Commitment Letter and forwards it to the local originator/underwriter. The local originator/underwriter forwards the commitment letter to the community for execution (after completion of the community's environmental review and HUD approval of a release of funds in accordance with Section VIII(A) of this NOFA) and delivery to the business borrower. Assuming that the business borrower signs and returns the commitment letter to the community, the community forwards copies of the executed commitment letter to the local originator/underwriter and the central underwriter. The local originator/underwriter works with the business borrower to satisfy any conditions of closing the loan. The satisfaction of closing conditions is evidenced by Closing Condition Memoranda to be prepared by the local originator/underwriter and forwarded to the central underwriter who concurs that specific conditions have been satisfied. Also during this period, the settlement attorney (in accordance with standard business practice the business borrower pays for legal closing documentation to be collected under the direction of the central underwriter) prepares the CEF Pilot's standard loan documents. The business borrower is given a reasonable opportunity to review the loan and security documents for its loan prior to execution. The CEF Program Manager informs the community and the local HUD office that the transaction should be funded upon execution and delivery of closing documentation, which will satisfy all closing conditions, to the central underwriter. Section 108 funds are disbursed to the business borrower via the CEF Transmittal Account with simultaneous exchange of the loan and related documents contributed to the CEF Pilot (see more complete description of this process at Section III(C)(5)(f), below). The estimated

timeframe for commitment and closing is twenty to thirty business days after completion of underwriting and due diligence.

(d) Structure of the CEF Pilot. The legal form of the ''CEF Pilot'' is a not-for-profit limited liability company (''LLC'') that is organized pursuant to Delaware law. The term ''CEF Pilot'' is used herein to refer to the LLC. Participating communities will place qualifying business loans into the CEF Pilot, and communities awarded EDI grant funds under this NOFA will commit to use these funds for the CEF Pilot's pooled cash reserve. Specific reserve amounts per loan will be determined by application of the underwriting guidelines on a case-by-case basis as described above. In return for such contributions the participating communities will receive ''member interests'' initially based upon the principal amount of the business loans that they place in the CEF Pilot.

Once a business loan is approved for the CEF Program and assigned to the CEF Pilot, participating communities will have no further administrative burden with respect to financial servicing and collection of the business loan. The CEF Pilot will hold the business loan assets and will receive and account for the business borrowers' loan payments. However, the community remains responsible for any data collection, reporting and compliance issues with respect to ''programmatic'' matters—Section 108/EDI national objectives, public benefit and other regulatory requirements.

The business borrowers will make their loan payments directly to the CEF Pilot's central servicer. The CEF Pilot will receive payments from the central servicer periodically and will be required to use the cash that it collects to make the principal and interest payments on the corresponding Section 108 notes and to pay its operating expenses. Available cash in excess of those requirements will be added to the cash reserve and invested in accordance with the approved investment guidelines. The cash reserve will be used as necessary to enable the CEF Pilot to meet the payment obligations on the Section 108 notes when there are shortfalls caused by loan delinquencies, defaults and collection losses. If the cash reserve experiences a shortfall in available cash at anytime, the shortfall will be apportioned ratably to all participating communities. Should any community not have CDBG allocations available to make a payment then due on the related Section 108 note as a result of the shortfall, HUD will be required to honor its guarantee of the community's Section 108 note in the amount of the shortfall when the payment is due. Should the community later have sufficient CDBG allocations available, HUD will recoup its guarantee payment from that source. However, as in the regular Section 108 program, the community will not be generally liable for payment from non-CDBG sources unless the community specifically agrees to another source of repayment (see 24 CFR 570.705(b)(3) and (d)).

The CEF Pilot is ''self-liquidating'' in that its assets will naturally shrink over time as business loans amortize or pre-pay, or as the Pilot collects on the collateral for any business loans that may have defaulted. Eventually, therefore, the CEF Pilot will have no more loan assets. This may be twenty years after the formation of the CEF Pilot (the maximum permissible term for the business loans), but it may be somewhat earlier due to prepayments. Additional payments may occur some time later due to prolonged servicing and workouts of business loans. Thus, the ''lifetime'' for the CEF Pilot cannot be predicted with certainty.

The CEF Pilot is designed with the intention that by the time that the CEF Pilot has collected upon all of the business loans, the CEF Pilot will have fully paid the related Section 108 notes. It is also anticipated that an excess cash reserve will then remain in an amount that may be distributed to the participating communities in proportion to their outstanding member interests, adjusted as described below. It is likely that the amount of the reserve will fluctuate somewhat over time in a path determined by the flow of payments into and out of the CEF Pilot, the timing and resolution of credit problems, and the CEF Pilot's return on investment for the reserve. If actual losses experienced are not substantially in excess of expectations, however, there should be an excess cash reserve available for distribution to the participating communities. The amount a participating community is eligible to receive from such distribution will be reduced if a business loan it assigns to the CEF Pilot defaults and the default results in a loss. The amount of the reduction will be proportionate to the loss or losses incurred.

(e) Credit Enhancements for Participating Communities. The CEF Pilot takes advantage of several modern techniques for minimizing credit risk:

- Professional, objective, and independent underwriting judgment in the pricing of loans is the principal credit loss safeguard.
- The use of EDI grant funds to establish the cash reserve that will be the initial ''cushion'' to absorb loan losses.
- There will be a credit ''spread'' between the interest rates charged business borrowers on the qualifying business loans contributed to the CEF Pilot as compared to the (lower) interest rate assessed on the community's Section 108 note obligation.
- The CEF Pilot will have both the EDI grant funds and the cash generated by the interest rate spread available in the reserve to absorb credit losses. The CEF Pilot will invest the reserve (in safe and liquid obligations approved by HUD) so that there are earnings on the reserve to absorb further any credit losses.
- The pooling of losses against the pooled reserve minimizes the probability that total losses will exceed the total reserve.

The general principle underlying the CEF Pilot's credit enhancement is ''over-collateralization.'' This means that, because of the initial EDI funding of the reserve, plus the cash inflow from the interest rate spread, recoveries on collateral, and earnings on the reserve over time, the CEF Pilot should always have assets on hand that exceed the amount of the corresponding Section 108 liabilities provided that loan losses do not significantly exceed expectations.

The Underwriting Guidelines, the financial design of the CEF Pilot, and the prospective amounts of EDI grants, are such that HUD is reasonably confident that the reserve will insulate participating communities from credit losses of a catastrophic nature.

(f) Administration and Servicing of business loans. The CEF Pilot involves communities early, as business loans are approved by HUD and by the CEF Pilot central underwriter at origination, but the CEF Program Manager and the other members of the CEF Program Manager's contractor team then relieve communities of the ongoing administrative burden of servicing and collection of the loan, as described above in this NOFA.

There will be a standardized CEF Pilot document package that will be used for the underwriting, approval and origination of all business loans.

The CEF Program Manager has established a transmittal account for all Section 108 fundings. When a business loan is approved (by HUD and by the CEF Pilot) and ready to close, the lending community will execute and deliver the Section 108 note and will cause the Section 108 funds to be transferred into the CEF Pilot's transmittal account. When the underlying business loan closes, the

participating community will direct the transfer of proceeds to the business borrower's account against delivery of the borrower's note, collateral documents and other loan documents.

The participating community will authorize delivery of the business borrower's loan documents to the CEF Pilot with documentation of the transfer of ownership of the business borrower's note to the CEF Pilot. The CEF Pilot will contemporaneously receive the corresponding loss reserve contribution (source: EDI grant or other funds). Other than monitoring periodic reports from the Pilot, the lending community is relieved of any financial loan management responsibilities after closing the project loan. (The community does retain responsibility for ensuring compliance with all program requirements, e.g., complying with the CDBG national objectives and public benefit requirements and ensuring business borrower's compliance with any conditions imposed as a result of the environmental review.) (See Section III(C)(2) of this NOFA.) The community will be able to use the periodic reports as a source of information that may assist it in monitoring compliance with program requirements (e.g., if a business loan is in default, it may indicate a problem in meeting minimum job creation requirements) as well as monitoring the financial status of the CEF Pilot.

The business borrowers will send their monthly loan payments directly to the CEF Pilot's central servicer for processing. The CEF Pilot will also directly remit the required Section 108 note payments of principal and interest to the Section 108 Fiscal Agent and Trustee.

The CEF Pilot will issue regular financial reports to the participating communities and to HUD that detail the performance of the loan assets, account for cash inflows and outflows, and report changes in the amounts of the cash reserve balance, the unpaid principal of the still outstanding business loans, and the outstanding Section 108 note balance.

(g) Fees and Expenses. The CEF Pilot will charge an application fee to each business borrower for business loans considered for acceptance. For business loans accepted by the CEF Pilot, each business borrower will be charged an acceptance fee of up to sixty two and one half basis points (.625%) of the business loan amount. In addition, the CEF Pilot will charge an annual operating fee of not less than .75% and not more than 1.25% of the then outstanding balance of the loan assets, payable monthly, depending on the size of the loan pool. (The ability of the business borrower to make all payments on the business loan, including the monthly fees, will be an underwriting consideration.)

There may be certain additional expenses that the CEF Pilot incurs, and which the business loan documents will require the business to pay. Examples of these expenses are the costs of collecting on collateral for defaulted loans, such as legal fees, recording fees, trustee's fees and the like. In addition there may be incentive fees paid to a Special Servicer engaged to collect upon seriously delinquent or defaulted loans. However, these fees will not be assessed against the participating communities.

(h) The CEF Team of Private Sector Contractors. The Bank of New York Company, Inc. (''BNY'') is the CEF Program Manager. BNY is a leading provider of investor and trust services worldwide. BNY will also serve as the Manager of the LLC that the CEF Pilot program first establishes.

Altschuler, Melvoin and Glasser LLP (''AM&G'') is responsible for underwriting and pricing the business loans originated by the participating communities and together with certain affiliates will serve as the Central Servicer and Central Underwriter for the CEF Pilot.

First Security Investor Reporting (''First Security'') is responsible for the CEF loan pricing model and portfolio reporting. First Security will work closely with AM&G and HTCNY throughout the CEF Pilot.

Brown & Wood LLP (''Brown & Wood'') is Counsel to the CEF Program Manager. Brown & Wood is an international law firm headquartered in New York, and has approximately 400 attorneys worldwide. Brown & Wood has substantial experience with securitization, public finance and other financial practice areas of particular relevance to the CEF Program.

Kormendi/Gardner Partners (''KGP'') is the Financial Advisor to the Program Manager.

In addition to the above identified contractors, the CEF Program Manager will select the local underwriters.

(i) The Program Manager was selected by HUD by competition under Federal contracting procedures, and the development of documentation such as the Underwriting Manual, pricing model, standard loan documents, and other necessary documentation, including documents for the creation of the CEF Pilot LLC, was funded by HUD's Office of Policy Development and Research under a Federal procurement contract. The contract provides for certain program evaluation and reporting responsibilities for the Program Manager. Public entities selected for EDI assistance, and receiving related Section 108 loan guarantee assistance, as well as businesses applying for or receiving business loans through the CEF Pilot, shall cooperate with the Program Manager and HUD in providing reasonable information deemed necessary by HUD in connection with such program evaluation.

(B) *Eligible Applicants*. Any public entity eligible to apply for Section 108 loan guarantee assistance pursuant to 24 CFR 570.702 may apply for EDI grant assistance under Section 108(q). Eligible applicants are CDBG entitlement units of general local government and non-entitlement units of general local government eligible to receive loan guarantees under 24 CFR part 570, subpart M. Urban Counties, as defined at 24 CFR 570.3 and 570.307, are eligible applicants for EDI funds; units of general local government which participate in an Urban County program are not independently eligible applicants. For non-entitlement applicants other than those subject to 24 CFR 570, subpart F, applicants will be required to provide proof that the State will support the related Section 108 loan with a pledge of its CDBG funds pursuant to the requirements of 24 CFR 570.705(b)(2). Note that effective January 25, 1995, non-entitlement public entities in the states of New York and Hawaii were authorized to apply to HUD for Section 108 loans (see 59 FR 47510, December 27, 1994). Thus, non-entitlement public entities in all 50 states and Puerto Rico are eligible to participate in the Section 108 and EDI programs. (Please note, however, that the State of New York has initiated the process of electing to administer the CDBG program in non-entitlement areas of the state; consequently, New York non-entitlement public entities may be required to provide proof that the State is willing to pledge its CDBG funds to the repayment of the Section 108 obligations.)

(C) *Eligible Activities and National Objectives*. (1) EDI grant funds awarded under this NOFA shall be used solely for the purpose of establishing debt service/loan loss reserves, eligible under 24 CFR 570.703(k). Section 108 loan guarantee funds may be used solely for activities listed at 24 CFR 570.703(i)(1) and 24 CFR 570.203(b). If your application, including the section 108 request (see Section IV(I) of this NOFA), fail to provide for these uses, HUD will not give the application a rating.

(2) Each activity assisted with Section 108 loan guarantee or EDI funds must meet a national objective of the CDBG program as described in 24 CFR 570.208. You must clearly identify in your narrative statement (as described in Section V.(D) below) the CDBG national objective your proposed project will achieve and provide the appropriate CDBG national objectives regulatory citation found at 24 CFR 570.208. Also, you must address how your proposed activities will comply with the public benefit standards of the CDBG program as reflected in the regulation at 24 CFR 570.209 for the CDBG Entitlement and Small Cities programs or 24 CFR 570.482 for the State CDBG program.

In the aggregate, your use of CDBG funds, including any Section 108 loan guarantee proceeds and section 108(q) (EDI) funds provided pursuant to this program section of this NOFA, must comply with the CDBG primary objectives requirement as described in section 101(c) of the Act and 24 CFR 570.200(c)(3), or 24 CFR 570.484 in the case of State grantees.

You will be responsible for determinations, record-keeping and other documentation of compliance with the eligibility, national objectives, and public benefit requirements, and other applicable statutory and regulatory requirements applicable to EDI and section 108 funds (as cited in this Section 111(C), with HUD approval, in a manner similar to other EDI/section 108 awards. However, since the business loans and EDI funds contributed to the common debt service/loan loss reserve will be common security for all of the related section 108 obligations issued by the participating jurisdictions selected under this NOFA, and all such loans must be closed on standard loan documents provided by the Program Manager as described in Section III(A)(5) of this NOFA, you must enter into any specific agreements with participating businesses that you deem necessary for purposes of compliance with such requirements, such as job creation goals, business location requirements, etc, *separately* from the standard loan documents provided by the Program Manager.

IV. Program Requirements

This section provides requirements that are applicable to applicants for funding under this NOFA as well as applicants that are awarded EDI grants under this NOFA.

(A) *CDBG Program Regulations.* In addition to 24 CFR 570.701 (Definitions), 570.702 (Eligible applicants), and 570.703 (Eligible activities), as explained elsewhere in this NOFA, the CDBG regulatory requirements in 24 CFR 570.707, including subpart J (Grant Administration), subpart K (Other Program Requirements), and subpart O (Performance Reviews) govern the use of EDI funds, as applicable.

(B) *Compliance with Applicable Laws.* An award of EDI funding does not in any way relieve you or third party users of EDI funds from compliance with all applicable Federal, State and local laws.

(C) *Thresholds Requirements—Compliance with Fair Housing and Civil Rights Laws.* All applicants and their subrecipients must comply with all Fair Housing and civil rights laws, statutes, regulations and executive orders as enumerated in 24 CFR 5.105(a). If you are a Federally recognized Indian tribe, you must comply with the nondiscrimination provisions enumerated at 24 CFR 1000.12. While an Indian tribe is not an eligible direct recipient of a section 108 loan guarantee, an Indian tribe may be a subrecipient of an eligible unit of general local government.

If you, the applicant—

(1) Have been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination;

(2) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or

(3) Have received a letter of noncompliance findings under Title VI, Section 504, or Section 109—

HUD will not rate and rank your application under this NOFA if the charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department before the application deadline stated in this NOFA. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(D) *Additional Nondiscrimination Requirements.* You, the applicant and your subrecipients, must comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 1201 *et seq.*), and Title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681 *et seq.*).

(E) *Affirmatively Furthering Fair Housing.* If you are a successful applicant, you will have a duty to affirmatively further fair housing. Again, except as may be provided otherwise in this NOFA, you, the applicant, should include in your application or work plan the specific steps that you will take to:

(1) Address the elimination of impediments to fair housing that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice;

(2) Remedy discrimination in housing; or

(3) Promote fair housing rights and fair housing choice.

Further, you, the applicant, have a duty to carry out the specific activities provided in your responses to the NOFA rating factors that address affirmatively furthering fair housing. However, such activities may not be funded from the EDI funds awarded under this NOFA since the funds must be used exclusively for debt service/loan loss reserves.

Since all eligible applicants will also be CDBG grantees, or nonentitlement CDBG recipients from States, the applicant may satisfy its affirmatively furthering fair housing obligation hereunder by referring to satisfactory provisions in its Consolidated Plan, as applicable.

(F) *Economic Opportunities for Low and Very Low-Income Persons (Section 3).* If you are awarded an EDI grant, you will be required to comply with section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Economic Opportunities for Low and Very Low-Income Persons in Connection with assisted Projects) and the HUD regulations at 24 CFR part 135, including the reporting requirements in subpart E of part 135. Section 3 requires recipients to ensure that, to the greatest extent feasible, training, employment and other economic opportunities will be directed to (1) low and very low income persons, particularly those who are recipients of government assistance for housing and (2) business concerns which provide economic opportunities to low-and very low-income persons.

(G) *Relocation.* Any person (including individuals, partnerships, corporations or associations) who moves from real property or moves personal property from real property directly (1) because of a written notice to acquire real property in whole or in part, or (2) because of the acquisition of the real property, in whole or in part, for a HUD-assisted activity is covered by Federal relocation statute and regulations. Specifically, this type of move is covered by the acquisition policies and procedures and the relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and the implementing governmentwide regulation at 49 CFR

part 24. The relocation requirements of the URA and the governmentwide regulations cover any person who moves permanently from real property or moves personal property from real property directly because of rehabilitation or demolition for an activity undertaken with HUD assistance. In addition, pursuant to 24 CFR 570.704(e), you are required to comply with additional requirements referred to in 24 CFR 570.606, as well as 24 CFR part 43.

(H) *Conflicts of Interest.* If you are a consultant or expert who is assisting HUD in rating and ranking applicants for funding under this NOFA, you are subject to 18 U.S.C. 208, the Federal criminal conflict of interest statute, and the Standards of Ethical Conduct for Employees of the Executive Branch regulation published at 5 CFR part 2635. As a result, if you have assisted or plan to assist applicants with preparing applications for this NOFA, you may not serve on a selection panel, and you may not serve as a technical advisor to HUD for this NOFA. All individuals involved in rating and ranking this NOFA, including experts and consultants, must avoid conflicts of interest or the appearance of conflicts. Individuals involved in the rating and ranking of applications must disclose to HUD's General Counsel or HUD's Ethics Law Division the following information if applicable: How the selection or non-selection of any applicant under this NOFA will affect the individual's financial interests, as provided in 18 U.S.C. 208; or how the application process involves a party with whom the individual has a covered relationship under 5 CFR 2635.502. The individual must disclose this information prior to participating in any matter regarding this NOFA. If you have questions regarding these provisions or if you have questions concerning a conflict of interest, you may call the Office of General Counsel, Ethics Law Division, at 202–708–3815 and ask to speak to one of HUD's attorneys in this division.

(I) *Related Section 108 Loan Guarantee Application.*

(1) Each EDI application must be accompanied by a request for new Section 108 loan guarantee assistance. Notwithstanding the form of your request for new section 108 loan guarantee assistance under paragraphs (a), (b), (c), or (d) of this section below, you must include citations to the specific regulatory subsections supporting activity eligibility and national objectives compliance for the project described in your application. For purposes of this NOFA, the only acceptable activity eligibility citation for use of EDI funds is 24 CFR 570.703(k) and the only acceptable eligibility citation for the related section 108 funds is 24 CFR 570.703(i)(1)–570.203(b). Both the EDI and Section 108 funds must be used in conjunction with the same business loans/economic development projects. This request may take any of several forms as defined below.

(a) A formal application for new Section 108 loan guarantee(s), including the documents listed at 24 CFR 570.704(b).

(b) A brief description (not to exceed three pages) of the business loan program to be applied for in a new Section 108 loan guarantee application(s). Such 108 application(s) must be submitted within 60 days of a notice of EDI selection, with HUD reserving the right to extend such period on a case-by-case basis where HUD determines there is evidence of good cause. EDI awards will be conditioned on approval of actual Section 108 loan commitments. This Section 108 application description must be sufficient to support the basic eligibility of the proposed business loan program for Section 108 assistance. (See Section III(C) of this NOFA.) In general, it should also describe the location of the lending area as well as the types of businesses expected to participate and the loan terms expected to be offered, e.g., repayment period, lien priority, and the purposes of the financing, such as real estate acquisition, construction, machinery and equipment, or working capital.

(c) A copy of a pending, unapproved Section 108 loan guarantee application, and any proposed amendments to the Section 108 application which are related to the EDI application. The applicant's submission of such an EDI/Section 108 application shall be deemed by HUD to constitute a request to suspend separate processing of the Section 108 application. The Section 108 application will not be approved until on or after the date of the related EDI award.

(d) A request for a Section 108 loan guarantee assistance (analogous to Section IV.(I)(1)(a) or (b) of this NOFA above) that proposes to increase the amount of a previously approved application. However, any amount of Section 108 loan guarantee authority approved *before* HUD's award of an EDI grant under this NOFA cannot be used in conjunction with the EDI funds awarded pursuant to this NOFA.

(2) Further, a Section 108 loan guarantee amount that is required to be used in conjunction with a prior EDI or Brownfields Economic Development Initiative (BEDI) grant award, whether or not the Section 108 loan guarantee has been approved as of the date of this NOFA, is not eligible for use in conjunction with an EDI award under this NOFA. For example, if a public entity has a previously approved Section 108 loan guarantee commitment of $12 million, even if none of the funds have been utilized, or if the public entity had previously been awarded an EDI grant of $1 million and had certified that it will submit a Section 108 loan application for $10 million in support of that EDI grant, the public entity's EDI application under this NOFA must propose to increase the amount of its total Section 108 loan guarantee commitments beyond those amounts (the $12 million or $10 million in this example) to which it has previously agreed.

(J) *General Limitations on Use of EDI and Section 108 Funds.* Certain restrictions shall apply to the use of EDI and Section 108 funds:

(1) EDI grants must not be used as a resource to immediately repay the principal of a loan guaranteed under Section 108. Repayment of principal is only permissible with EDI grant funds as a matter of security if other sources projected for repayment of principal prove to be unavailable.

(2) You may not use Section 108 funds to finance activities that also include financing generated through the issuance of federally tax exempt obligations. Pursuant to Office of Management and Budget (OMB) Circular A–129 (Policies for Federal Credit Programs and Non-Tax Receivables), Section 108 guaranteed loan funds may not directly or indirectly support federally tax-exempt obligations.

HUD will not consider for funding any EDI proposal in which the related Section 108 loan guarantee would be used solely as security, and Section 108 funds are not drawn down until default on the business loan. EDI funds are to be used to support and enhance only business loans financed with Section 108 loan guarantee proceeds from HUD's interim lending or public offering mechanisms and thereby leverage greater use of the Section 108 program. Awarding EDI funds to a project which would use the Section 108 guarantee only as a security guarantee for other financing can be tantamount to making a simple grant to the project and thereby fails to fulfill the goals of the EDI program.

(K) *Time-frames.* EDI grant awards will contain conditions requiring you to adhere to your stated time-frames for implementing your proposed projects and drawing Section 108 and EDI funds.

If you fail to adhere to these schedules, HUD may recapture the EDI funds.

(L) *Limitations on Grant Amounts.*

(1) HUD expects to approve EDI grant amounts for approvable applications at a range of ratios of EDI grant funds awarded to new Section 108 loan guarantee commitments, but the *minimum* ratio will be $1 of EDI grant funds for every $7 of Section 108 loan guarantee commitments. In addition, HUD expects on the average to achieve even higher leverage ratios, *e.g.,* approximately 1 to 10 under this NOFA.

For example, an applicant requesting an EDI grant of $1 million will be required to apply for a minimum of $7 million in new Section 108 loan guarantee commitments. Of course, even though the minimum EDI—Section 108 ratio is 1:7, applications with higher ratios will receive more points under Rating Factor 4, ''Leveraging Resources/Financial Need'' and, all other things being equal, will be more competitive. However, applicants should bear in mind that the leverage ratio is a function of the risk level of the business loan portfolio originated with Section 108 guaranteed loan funds. For example, if the business loan portfolio of Community A has a higher risk profile than Community B's portfolio, the amount of EDI funds used to fund the contribution to the CEF Pilot's debt service/loss reserve for Community A's business loans will be higher (as a percentage of the aggregate loan amount) than the required contribution for Community B's loans. The minimum ratio of EDI grant funds to Section 108 commitments (*i.e.,* 1:7) indicates loss reserve contributions equal to approximately 14% of the loan amount. This further indicates that the business loans originated by the community whose application provided for the minimum EDI—Section 108 ratio would fall into a higher risk category than would be the case with a higher EDI—Section 108 ratio (*e.g.,* 1:12).

An applicant community is therefore encouraged to carefully consider the risk profile of the business loan portfolio it will originate with the Section 108 guaranteed loan funds. Applicants are also cautioned that very high leverage ratios could be determined by HUD to be unrealistic, since even lower risk business loans must be accompanied by contributions to the CEF Pilot's reserve. While the loss reserve contribution for each business loan would be determined on a case by case basis, each loan will be classified by the CEF Pilot underwriter as falling in one of three risk tiers. Communities may use the following guidelines in developing proposed leveraging ratios:

(a) The minimum ratio of EDI grant funds to Section 108 commitments of 1:7 indicates average EDI contributions to the CEF Pilot's reserves of approximately 14% of the loan amount and a relatively higher risk loan portfolio;

(b) A ratio of EDI grant funds to Section 108 commitments of 1:10 indicates average EDI contributions to the CEF Pilot's reserves of approximately 10% of the loan amount and a relatively moderate risk loan portfolio; and

(c) A ratio of EDI grant funds to Section 108 commitments of 1:13 (or higher) indicates average EDI contributions to the CEF Pilot's reserves of approximately 8% of the loan amount and a lower risk portfolio.

Communities are also cautioned that the CEF Program Manager will continually evaluate the business loans originated by a participating community to ensure that the actual risk level of that community's portfolio is not significantly higher than the risk level indicated in the approved application. The CEF Program Manager will have the discretion to reject business loans for acceptance into the CEF Pilot if the loans fall within a higher risk tier than indicated in the community's application and such acceptance would have a material effect on the risk level of the CEF Pilot's portfolio. The community should therefore ensure when it originates loans that the actual risk level of its business loan portfolio is generally consistent with the risk level described in its application.

Because a fundable application is competitive in part because of the applicant's proposed ratio of EDI funds to Section 108 guaranteed loan funds, HUD will condition the EDI grant award on the grantee's achievement of that specific ratio. Your failure to meet that condition by obtaining timely HUD approval of a commitment for, and issuance of, the required Section 108 guaranteed obligations ratio may result in the cancellation and recapture of all or a proportionate share of the EDI grant award.

Further, failure to give adequate consideration to the issues discussed above concerning the risk level of the business loan portfolio during the application development stage could result in the following problems following grant award. EDI grant recipients whose applications provided for the minimum EDI—Section 108 leverage ratio (*i.e.*, $1 of EDI grant funds for every $7 of Section 108 loan guarantee funds) will be unable to use all of their EDI funds if the actual risk level is not as high as contemplated in the EDI applications. In such case, HUD may recapture the unused funds. On the other hand, EDI grant recipients whose applications included relatively high leverage ratios will have insufficient EDI grant funds to meet their minimum Section 108 borrowing requirements if their business loans are classified by the CEF underwriter as falling in a higher risk tier than originally contemplated.

(2) HUD will cap EDI awards at a maximum of $1 million under this NOFA.

(3) In the event you are awarded an EDI grant that has been reduced below the original request (*e.g.,* insufficient funds were available to fund the last competitive application at the full amount requested or there were technical deficiencies that could not be resolved), you will be required to modify your project plans and application to conform to the terms of HUD's approval before HUD will execute a grant agreement. HUD also may proportionately reduce or deobligate the EDI award if you do not submit approvable Section 108 loan guarantee applications on a timely basis (including any extension authorized by HUD) in the amount required by the EDI/108 leveraging ratio which will be approved by HUD as a special condition of the EDI grant award, or if insufficient business loans are approved during the term of your business loan program to use the EDI funds awarded in the required ratio. Any modifications or amendments to your application approved pursuant to this NOFA, whether requested by you or by HUD, must be within the scope of the approved original EDI application in all respects material to rating the application, unless HUD determines that the revised application remains within the competitive range and is otherwise approvable under this competition.

(4) In the case of a requested increase in guarantee assistance for a project with a previously approved Section 108 loan guarantee commitment (as further discussed in Section IV.(I)(1)(d) of this NOFA, above), the EDI assistance approved will be based on the increased amount of Section 108 loan guarantee assistance.

(M) *Timing of Grant Awards.* (1) To the extent you submit a full Section 108 application with your EDI grant application, HUD will evaluate the Section 108 application concurrently with the request for EDI grant funds. Note that EDI grant assistance cannot be used to leverage a Section 108 loan guarantee approved prior to the date of HUD's announcement of an EDI grant pursuant to this NOFA. However, the

EDI grant may be awarded before HUD approval of the Section 108 commitment if HUD determines that such award will further the purposes of the Act.

(2) HUD notice to you of the amount and conditions of EDI funds awarded, based upon review of the EDI application, constitutes an obligation of grant funds, subject to compliance with the conditions of award and execution of a grant agreement. EDI funds must not be disbursed to the public entity before the issuance of the related Section 108-guaranteed obligations.

V. The Application Selection Process

(A) *Rating Panels.* To review and rate your applications, HUD may establish panels. These panels may include persons not currently employed by HUD. HUD may include these non-HUD employees to obtain certain expertise and outside points of view, including views from other Federal agencies.

(B) *Rating.* HUD will evaluate and rate all applications for funding that meet applicable requirements and rating factors for award described in this NOFA. The rating of you, as the ''applicant,'' or of your organization, ''the applicant's organization and staff,'' for technical merit or compliance will include any sub-contractors, consultants, and sub-recipients which are firmly committed to the project.

(C) *Factors for Award Used to Evaluate and Rate Applications.* (1) Each rating factor and the maximum number of points is provided below. The maximum number of points to be awarded is 102. All EDI applications must obtain a score of at least 70 points to be fundable. Depending upon the program for which you the applicant seek funding, the program may provide for up to four bonus points as provided in paragraphs (3)(a) and (3)(b) of this Section V(C).

(2) All technically acceptable applications will be scored under the selection criteria below.

All acceptable EDI grant applications will be separately ranked in order of points assigned with the applications receiving more points ranking above those receiving fewer points. Acceptable applications must be complete as required by the submission requirements of this NOFA. Applications will be funded in rank order until the total aggregate amount of the applications funded is equal to up to $10 million (subject to the Department's discretion described in this NOFA).

(3) *Bonus Points.* (a) The NOFA provides for the award of up to two bonus points for eligible activities/projects that the applicant proposes to be located in federally designated Empowerment Zones (EZs), Enterprise Communities (ECs), or Urban Enhanced Enterprise Communities (EECs) and serve the residents of these federally designated areas, and are certified to be consistent with the strategic plan of these federally designated areas. (For ease of reference in the NOFA, these federally designated areas are collectively referred to as ''EZs/ECs'' and residents of these federally designated areas as EZ/EC residents.) [1] This NOFA contains a certification which must be completed for the applicant to be considered for EZ/EC bonus points. A list of the EZs, ECs and EECs (as well as more information about these designated areas) is available through the HUD web site at http://www.hud.gov. The list is also attached to this NOFA as Appendix A.

(b) *Court-Ordered Consideration.* For any application submitted by the City of Dallas, Texas, for funds under this NOFA for which the City of Dallas is eligible to apply, HUD will consider, under Rating Factor 3 below, the extent to which the strategies or plans in the city's application or applications will be used to eradicate the vestiges of racial segregation in the Dallas Housing Authority's low income housing programs. The City of Dallas should address the effect, if any, that vestiges of racial segregation in the Dallas Housing Authority's low income housing programs have on potential participants in the program covered by this NOFA, and identify proposed actions for remedying those vestiges. HUD may add up to 2 points to the score based on this consideration. This special consideration results from an order of the U.S. District Court for the Northern District of Texas, Dallas, Division.

(D) *Narrative Statement.* (1) Provide narrative statements describing the activities that you will carry out with the EDI grant funds. Your narrative statement must not exceed three (3) 8.5'' by 11'' pages.

(2) Describe how your proposed uses of EDI funds will meet the national objectives under 24 CFR 570.208 for the CDBG program and qualify as eligible activities under 24 CFR 570.703. *You must include citations to the specific regulatory subsections supporting activity eligibility and national objectives compliance.* (See Section III(C) of this NOFA).

(3) You must respond to the rating factors below. Each of the listed rating factors (or, where applicable, each subfactor) below has a separate page limitation specified.

(4) Print your narrative statements in 12 point type/font, and use sequentially numbered pages.

(E) *The Five Rating Factors.* HUD will consider your application for selection based on the following factors that demonstrate the quality of your proposed project or activities, and your capacity and commitment to obtain maximum benefit from the EDI funds, in accordance with the purposes of the Act.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (25 Points)

[Your response to this factor is limited to three (3) pages.]

This factor addresses the extent to which you have the organizational resources necessary to successfully implement your proposed activities in a timely manner. The rating of the ''applicant'' or the ''applicant's organization and staff'' for will include any subcontractors, consultants, and subrecipients that are firmly committed (i.e., has a written agreement or a signed letter of understanding with the applicant agreeing in principle to its participation and role in the project). In rating this factor, HUD will consider the following:

(1) With regard to the EDI/Section 108 business loan program you propose, you should demonstrate that you (or other program participants) have the capacity to implement the specific steps required to successfully carry out your proposed EDI/Section 108 program. This includes factors such as your:

(a) Previous performance in the administration of your CDBG, HOME or other programs;

(b) Performance and capacity in carrying out economic development programs that involve third party lending;

(c) Capacity to carry out your projects and programs in a timely manner (submission of a complete Section 108 application pursuant to Section IV.(I)(1)(a) or (c) of this NOFA will be deemed by HUD as one indicator of an applicant's ability to carry out the proposed project in a timely manner); and,

[1] On December 21, 1994, President Clinton and Vice President Gore designated 72 urban areas and 33 rural communities as Empowerment Zones or Enterprise Communities. These designated areas receive more than $1.0 billion in performance grants and more than $2.5 billion in tax incentives. On August 5, 1997, President Clinton signed the Taxpayers Relief Act of 1997 which established a second round of designations for 15 new urban areas and 25 rural areas as Empowerment Zones or Enterprise Communities. Round II designees were announced in January 1999.

(d) If you are so designated, your capacity to manage projects under this NOFA along with any federal funds awarded as a result of a federal urban Empowerment Zone/Enterprise Community designation (including Enhanced Enterprise Community (EEC) designation).

(2) If you have previously received an EDI or BEDI grant award(s), you must describe the status of the implementation of those project(s) assisted with EDI or BEDI funds, any delays that have been encountered and the actions you are taking to overcome any such delays to carry out the project in a timely manner. For such previously funded EDI or BEDI grant projects, HUD will consider the extent to which you have used the awarded EDI or BEDI grant funds and the associated Section 108 guaranteed loan funds, and the accomplishments achieved.

(3) The capacity of subrecipients, nonprofit organizations and other entities that have a role in implementing your proposed business loan program will be included in this review.

In addition to the application, HUD also may rely on information from performance reports, financial status information, monitoring reports, audit reports and other information available to HUD in making its determination under this factor.

Rating Factor 2: Distress/Extent of the Problem (15 Points)

[Your response to this factor is limited to three (3) pages.]

This factor addresses the extent to which there is need for funding your proposed business loan program based on levels of distress, and an indication of the urgency of meeting the need/distress in your target area.

(1) In applying this factor, HUD will consider current levels of distress in the immediate community to be served by your business loan program and the jurisdiction applying for assistance. If you are able to indicate a level of distress in the immediate program area that is greater than the level of distress in your jurisdiction as a whole, HUD will give your application a higher score for this factor. HUD requires you to use sound and reliable data that is verifiable to support the level of distress you claim in your application. You must provide a source for all information you cite and indicate the publication date or origination date of the data.

(2) In previous EDI competitions, the poverty rate was often considered the best indicator of distress. Therefore, at a minimum, your response must provide the poverty rate for your jurisdiction as a whole and for the areas to be served and/or where the EDI/Section 108 funded business loan program is located; however, in addition, you may demonstrate the level of distress with other factors such as income levels and unemployment rates.

(3) To the extent that your Consolidated Plan and your Analysis of Impediments to Fair Housing choice (AI) identifies the level of distress in the community and the neighborhood in which your business loan program is being carried out, you should include references to such documents in preparing your response to this factor. Also, you should discuss the extent to which the analysis of impediments identifies unhealthy environmental conditions in your program area, and how such conditions negatively impact your target neighborhood.

Rating Factor 3: Soundness of Approach (30 Points)

[Your response to this factor is limited to three (3) pages.]

This factor addresses the quality and cost-effectiveness of your proposed plan. There must be a relationship between the proposed business loans, community needs and purposes of the program funding for you to receive points for this factor. In rating this factor, HUD will consider the following:

(1) The quality of your plan/proposal for the use of EDI funds and Section 108 loan funds, including the extent to which your proposed plan for effective use of EDI grant/Section 108-guaranteed loan funds will address the needs you described in Rating Factor 2 above regarding the distress and extent of the problem in your immediate community and/or jurisdiction. As part of the response to this factor, you should fully describe how your business loan program will achieve a national objective. Inasmuch as most programs are expected to involve loans to be made to businesses not yet identified, it may not be possible to determine which of the specific national objectives and public benefit criteria would be met by the individual business loans. Consequently, it may be necessary to condition the EDI grant award and the Section 108 loan guarantee commitment on a determination by the appropriate HUD Field Office of compliance with the national objectives and public benefit requirements. Such condition would be imposed with respect to each business loan to be made with Section 108 guaranteed loan funds. You should demonstrate how your proposed project would mitigate or otherwise address the distress identified in Rating Factor 2 above.

(2) The extent to which your plan is feasible and likely to achieve its stated purpose. HUD's desire is to fund business loan programs which will quickly produce demonstrable results and advance the purposes of the EDI program, including the number of jobs to be created by the program and the impact of the program on job creation that will benefit individuals on welfare or low to very low income persons. You should demonstrate your knowledge of the steps required to implement your business loan program and the actions that you and others responsible for implementing your project must complete. You must include a time schedule for carrying out your program.

(3) The extent to which your proposed business loan program addresses your Analysis of Impediments and the needs identified in Rating Factor 2; the extent to which such business loan program will result in physical and economic improvement for the residents in the neighborhood in which your program will be carried out; the extent to which you will offer residents an opportunity to relocate to environmentally healthy housing or neighborhoods; or the extent to which current residents will benefit from the funded loans to enable them to work and continue to live in a redeveloped or revitalized neighborhood and thus share in the anticipated economic benefits your program is expected to generate.

(4) The extent to which your business loan program incorporates one or more elements that facilitate a successful transition of welfare recipients from welfare to work. Such an element could include, for example, linking your proposed business loan program to social and/or other services needed to enable welfare recipients to successfully secure and carry out full-time jobs in the private sector; provision of job training to welfare recipients who might be hired by businesses financed through the proposal; and/or incentives for businesses financed with EDI/section 108 funds to hire and train welfare recipients.

(5) Due to an order of the U.S. District Court for the Northern District of Texas, Dallas Division, with respect to any application submitted by the City of Dallas, Texas, HUD's consideration of the response to this factor, ''Soundness of Approach,'' will include the extent to which Dallas' plan for the use of EDI funds and Section 108 loans will be used to eradicate the vestiges of racial segregation in the Dallas Housing Authority's programs consistent with the Court's order. Up to two (2) additional points will be awarded to any application submitted by the City of

Dallas, Texas, to the extent this subfactor is addressed.

Rating Factor 4: Leveraging Resources/ Financial Need (20 Points)

[Page limits for the response to this factor are listed separately for each subfactor under this factor.]

In evaluating this factor, HUD will consider the extent to which your response demonstrates the financial need of your business loan program and the leverage ratio of Section 108 loan proceeds to EDI grant funds. This factor has two subfactors, each with its own maximum point total:

(1) *Leverage of Section 108 funds* (5 points).

[Your response to this subfactor is limited to one (1) page.]

The minimum ratio of EDI grant funds to Section 108 guaranteed loan funds in any business loan program may not be less than 1:7. The extent to which your proposed program leverages an amount of Section 108 funds beyond the 1:7 ratio will result in your receiving a higher number of points. If you use your EDI grant to leverage more new Section 108 commitments, your application will receive more points under this subfactor. However, for the reasons discussed in Section IV(L)(1), the extent to which Section 108 funds can be leveraged is limited by practical considerations of risk. Therefore, an application will not receive more points under this factor if the leverage ratio is higher than $1 of EDI grant funds to $13 dollars of Section 108 loan guarantee commitments.

(2) *Leverage of other financial resources* (15 points). Your response to this subfactor is limited to one (1) page plus supporting documentation evidencing third party commitment (written and signed) of funds. HUD will evaluate the extent to which you leverage other funds (public or private) with EDI grant funds and Section 108 guaranteed loan funds and the extent to which such other funds are firmly pledged to the business loan program. This could include the use of CDBG funds, other Federal or state grants or loans, your general funds, project equity or commercial financing provided by private sources or funds from non-profits or other sources. Funds will be considered pledged to the project if there is evidence of the third party's written commitment to make the funds available for an EDI/108 project, subject to approval of the EDI and Section 108 assistance and satisfactory completion of any environmental review required under 24 CFR part 58 for the project. For purposes of this subfactor, funds committed to the business loan program for purposes other than the funding of business loans and cash reserves may be counted. For example, other funds committed for training programs for persons employed or to be employed by businesses receiving loans under the program may be counted for this subfactor. Note, that with respect to commitment of CDBG funds, your proposed use of CDBG funds must be included in your Consolidated Plan (or, an application approved by the State), subject to approval of the EDI and Section 108 assistance.

Rating Factor 5: Comprehensiveness and Coordination (10 Points)

[Your response to this factor is limited to two (2) pages.]

This factor addresses the extent to which you have coordinated your activities with other known organizations; you participate or promote participation in your or a State's Consolidated Planning and Analysis of Fair Housing Impediments processes; and you are working towards addressing a need in a comprehensive manner through linkages with other activities in the community.

In evaluating this factor, HUD will consider the extent to which you demonstrate you have:

(1) Coordinated your proposed business loan program with those of other groups or organizations before submission, in order to best complement, support and coordinate all known activities; and developed specific steps to share information on solutions and outcomes with others. Describe any written agreements or memoranda of understanding in place, or that will be in place after award.

(2) Developed linkages, or specific steps to develop linkages with other activities, programs or projects (through meetings, information networks, planning processes or other mechanisms to coordinate activities), so that solutions are holistic and comprehensive. Describe any linkages with other HUD-funded projects/ activities outside the scope of those covered by the Consolidated Plan, as well as established linkages and outreach with residents of your business loan program area. Particular emphasis should be placed on outreach efforts that ensure that, to the greatest extent feasible, training, employment and other economic opportunities have or will be directed to low and very low income residents within the area of the community where the business loan will be invested in order to meet the national objective of increasing access to jobs for residents of low-income communities.

(F) *Adjustments to Funding.*

(1) HUD reserves the right to fund less than the full amount requested in your application to ensure the fair distribution of the funds and to ensure that the purposes of the EDI program are met.

(2) HUD will not fund any portion of your application that is not eligible for funding under specific program statutory or regulatory requirements; which does not meet the requirements of this NOFA or which may be duplicative of other funded programs or activities from previous years' awards or other selected applicants. Only the eligible portions of your application (including non-duplicative portions) may be funded.

(3) If funds remain after funding the highest ranking applications, HUD may fund part of the next highest ranking application. If you, the applicant, turn down the award offer, HUD will make the same determination for the next highest ranking application. If funds remain after all selections have been made, remaining funds may be available for other competitions.

(4) In the event HUD commits an error that, when corrected, would result in selection of an otherwise eligible applicant during the funding round of this NOFA, HUD may select that applicant when sufficient funds become available.

(5) After selection, but prior to award, if HUD determines that your application could be funded at a lesser EDI grant amount than requested consistent with feasibility of the funded business loan program and the purposes of the Act, HUD reserves the right to reduce the amount of the EDI award and/or increase the required Section 108 loan guarantee commitment, if necessary.

VI. Application Submission Requirements

If you are submitting an application for funding under this NOFA you must submit the items listed in this Section VI to have a complete application.

(A) *Transmittal Letter* signed by the authorized representative of your organization indicating that you are submitting your application for funding under the Economic Development Initiative Program and you are requesting funding consideration for an EDI project.

(B) *Request for Loan Guarantee Assistance.* A request for loan guarantee assistance under Section 108, as further described in Section IV(I) of this NOFA. Full application guidelines for the Section 108 program are found at 24 CFR 570.704.

(C) *Narrative Response to Factors for Award:*

(1) Rating Factor 1: Capacity and Relevant Organizational Experience. Provide a narrative indicating your capacity and the relevant capacity of your organization and staff to perform the work for which you are requesting funding.

(2) Rating Factor 2: Need Statement Identifying the level of Distress/Extent of the Problem. Provide a narrative statement including any documentation supporting your statement of need.

(3) Rating Factor 3: Soundness of Approach. Include your activities, budget and time frame for conducting activities in your response.

(4) Rating Factor 4: Leveraging Resources/Financial Need. Provide a narrative response to this factor.

(5) Rating Factor 5: Comprehensiveness and Coordination. Provide a narrative response to this factor.

(D) *Additional Application Forms and Certifications.* You must also submit the following forms and certifications:

(1) Application for Federal Assistance (Standard Form (SF) 424);

(2) Standard Form for Assurances—Non-Construction Programs (SF 424B);

(3) Drug-Free Workplace Certification, HUD–50070;

(4) Certification of Payments to Influence Federal Transactions, HUD 50071, and if engaged in Lobbying, the Disclosure Form Regarding Lobbying, SF–LLL;

(5) Applicant/Recipient Disclosure/Update Report, HUD–2880;

(6) Certification Regarding Debarment and Suspension, HUD–2992; and

(7) If applicable, the Certification of Consistency With EZ/EC Strategic Plan, HUD–2990.

These forms are found in the Appendix B to this NOFA. You are not required to submit Budget Information on Standard Form 424A.

If you wish to receive an acknowledgment of HUD's receipt of your application, please submit a completed Acknowledgment of Receipt of Application form.

VII. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information you, the applicant, may want to provide. HUD may contact you, however, to clarify an item in your application or to correct technical deficiencies. You should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of your response to any selection factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may, however, contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. *Examples* of curable (correctable) technical deficiencies include your failure to submit the proper certifications or your failure to submit an application that contains an original signature by an authorized official. In each case, HUD will notify you in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by mail or other delivery service with return receipt requested. You must submit clarifications or corrections of technical deficiencies in accordance with the information provided by HUD within 7 calendar days of the date of receipt of the HUD notification. (If the due date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or Federal holiday.) If your deficiency is not corrected within this time period, HUD will reject your application as incomplete, and it will not be considered for funding.

VIII. Environmental Requirements

(A) *Environmental Review.* After the completion of this competition and after HUD's award of EDI grant funds, pursuant to 24 CFR 570.604, each project or activity (as such terms are defined in 24 CFR part 58) assisted under this program is subject to the provisions of 24 CFR part 58, including limitations on the EDI grant and Section 108 public entity's commitment of HUD and non-HUD funds prior to the completion of environmental review, notification and release of funds. No such assistance will be released by HUD until a request for release of funds is submitted and the requirements of 24 CFR part 58 have been met. All public entities, including nonentitlement public entities, shall submit the request for release of funds and related certification, required pursuant to 24 CFR part 58, to the appropriate HUD field office for each project or activity (as such terms are defined in 24 CFR part 58) to be assisted.

(B) *Environmental Justice.* Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) directs Federal agencies to develop strategies to address environmental justice. Environmental justice seeks to rectify the disproportionately high burden of environmental pollution that is often borne by low-income, minority, and other disadvantaged communities, and to ensure community involvement in policies and programs addressing this issue.

IX. Findings and Certifications

(A) *Environmental Impact.* A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Regulations Division, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

(B) *Executive Order 13132, Federalism.* Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating policies that have federalism implications and either impose substantial direct compliance costs on State and local governments and are not required by statute, or preempt State law, unless the relevant requirements of section 6 of the Executive Order are met. This NOFA does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

(C) *Prohibition Against Lobbying Activities.* You, the applicant, are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. You are required to certify, using the certification found at Appendix A to 24 CFR part 87, that you will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, you must disclose, using Standard Form LLL, ''Disclosure of Lobbying Activities,'' any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts.

(D) *Section 102 of the HUD Reform Act; Documentation and Public Access*

Requirements. Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this NOFA as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (update information also reported on Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 5.

(3) *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR 4.7 provide that HUD will publish a notice in the **Federal Register** on at least a quarterly basis to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to section 102(a) of the HUD Reform Act; or

(ii) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(E) *Section 103 HUD Reform Act.* HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, subpart B, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, the employee should contact the appropriate field office counsel, or Headquarters counsel for the program to which the question pertains.

(F) *Paperwork Reduction Act Statement.* The information collection requirements for applying for funding under the Economic Development Initiative have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2506–0153.

(G) *Catalog of Federal Domestic Assistance.* The CFDA number for this program is 14.246.

X. Authority

Section 108(q), Title I, Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5301–5320); 24 CFR part 570.

Dated: June 26, 2000.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

APPENDIX A.—LIST OF EZS, ECS, AND URBAN ENHANCED ENTERPRISE COMMUNITIES

Name & City	Phone & fax numbers
URBAN EMPOWERMENT ZONES (23)	
CA, Los Angeles (EZ)	
David Eder, EZ Program Coordinator, City of Los Angeles EZ/EC Programs, Los Angeles Community Development Department, 215 West 6th Street, Third Floor, Los Angeles, CA 90014.	213–485–0783 (Phone) 213–847–0890 (Fax)
CA, Santa Ana (EZ)	
Aldo Schindler, EZ Manager, Community Development Agency M21, PO Box 1988, Santa Ana, CA 92702	714–647–6507 (Phone) 714–647–6580 (Fax)
CT, New Haven (EZ–EC)	
Sherri Killins, President/CEO, Empower New Haven, Inc., 59 Elm St., 4th Floor, Suite 410, New Haven, CT 06510.	203–776–2777 (Phone) 203–776–0537 (Fax)
FL, Miami/Dade County (EZ–EC)	
Bryan K. Finnie, President/CEO, Miami-Dade Empowerment Trust, Inc., 140 West Flagler Street, Suite 1107, Miami, FL 33130.	305–372–7620 (Phone) 305–372–7629 (Fax)
GA, Atlanta (EZ)	
Charisse Richardson, Interim Executive Director, Atlanta EZ Corporation, City Hall East, 675 Ponce de Leon Avenue, Second Floor, Atlanta, GA 30308.	404–853–7610 (Phone) 404–853–7315 (Fax)
IL, Chicago (EZ)	
Wallace Goode, Executive Director, City of Chicago 20 North Clark Street, 28th Floor, Chicago, IL 60602	312–744–9623 (Phone) 312–744–9696 (Fax)
IN, Gary, E. Chicago, Hammond (EZ)	
IN, Gary	
Taghi Arshami, Office of Planning & Community Development, 475 Broadway, Suite 318, Gary, IN 46402	219–881–5075 (Phone) 219–881–5085 (Fax)
IN, E. Chicago	
John Artis, Executive Director, City of East Chicago, Dept. of Redevelopment and Housing Authority, 4920 Larkspur Drive, East Chicago, IN 46312.	219–397–9974 (Phone) 219–397–4249 (Fax)

APPENDIX A.—LIST OF EZS, ECS, AND URBAN ENHANCED ENTERPRISE COMMUNITIES—Continued

Name & City	Phone & fax numbers
IN, Hammond	
MA, Boston (EZ–EEC)	
Reginald Nunnally, Executive Director of Enhanced EC/Interim Director of EZ, Boston Empowerment Center, 20 Hampdon St., Roxbury, MA 02119.	617–445–3413 (Phone) 617–445–5675 (Fax)
MD, Baltimore (EZ)	
Diane Bell, President & CEO, Empower Baltimore Management Corporation, 34 Market Pl., Suite 800, Baltimore, MD 21202.	410–783–4400 (Phone) 410–783–0526 (Fax)
MI, Detroit (EZ)	
Denise Gray, Executive Director, Empowerment Zone Development Corporation, 1 Ford Place, Suite 1F, Detroit, MI 48202.	313–872–8050 ext. 17 (Phone) 313–872–8002 (Fax)
MN, Minneapolis (EZ–EC)	
Kim W. Havey, Director, Minneapolis Empowerment Zone, 350 South Fifth Street, Room 200, Minneapolis, MN 55415.	612–673–5415 (Phone) 612–673–3724 (Fax)
MO, St. Louis/E. St. Louis, IL (EZ–EC)	
A. Danine Lard, Executive Director, The Greater St. Louis Regional Empowerment Zone, Management Corporation, Inc., Suite 1030, 1015 Locust St., St. Louis, MO 63101.	314–622–3400 ext. 709 (Phone) 314–436–7983 (Fax)
NJ, Camden (EZ) See also Philadelphia, PA	
Liz Janota, Acting Managing Director, Camden Empowerment Zone Corporation, Hudson Square Complex, 817 Carpenter St., Camden, NJ 08102.	856–365–0300 (Phone) 856–365–1058 (Fax)
NJ, Cumberland County (EZ)	
Jerry Velazquez, Executive Director, Cumberland Empowerment Zone Corporation 50 E. Broad Street, Bridgeton, NJ 08302.	856–459–1700 (Phone) 856–459–4099 (Fax)
NY, New York (EZ) (Main Contact)	
Marion Phillips, III, Chief Administrative Officer, New York Empowerment Zone Corporation, 633 3rd Avenue, New York, NY 10017.	212–803–3239 (Phone) 212–803–3294 (Fax)
James Ilako, Director, Empowerment Zone, Empire State Development Corporation, 633 Third Avenue, 32nd Floor, New York, New York 10017.	212–803–3237 (Phone) 212–803–3294 (Fax)
June Van Brackle, Director, Mayor's Office of the New York City EZ, 100 Gold Street, 2nd Floor, New York, New York 10038.	212–788–6777 (Phone) 212–788–2718 (Fax)
NY, New York (Bronx)	
Maria Canales, Director, Bronx Empowerment Zone, Bronx Overall Economic Development Corporation, 198 East 161st Street, Suite 201, Bronx, NY 10451.	718–590–6201 (Phone) 718–590–3499 (Fax)
NY, New York (Upper Manhattan)	
Fernando Fernandez, Director of Community Affairs, Upper Manhattan Empowerment Zone, Development Corporation 290 Lenox Avenue, 3rd Floor, New York, NY 10027.	212–410–0030 ext. 244 (Phone) 212–410–9616 (Fax)
OH, Cincinnati (EZ)	
Susan Paddock, Special Assistant to the City Manager, City of Cincinnati, 801 Plum Street, Room 104, Cincinnati, OH 45202.	513–352–4648 (Phone) 513–352–2458 (Fax)
OH, Cleveland (EZ)	
Valarie McCall, Director, Cleveland Empowerment Zone, 601 Lakeside Avenue, City Hall, Room 335, Cleveland, OH 44114.	216–664–2804 (Phone) 216–420–8522 (Fax) 216–664–3083 (Direct)
OH, Columbus (EZ–EC)	
Jon Beard, Columbus Compact Corporation, 1000 East Main St., Columbus, OH 43205	614–251–0926 (Phone) 614–251–2243 (Fax)
PA, Philadelphia/NJ, Camden (EZ) See also NJ, Camden	
Eva Gladstein, Executive Director, City of Philadelphia, 1515 Arch Street, l Parkway, 9th Fl., Philadelphia, PA 19103.	215–683–0462 (Phone) 215–683–0493 (Fax)
SC, Sumter/Columbia (EZ)	
Milton Smalls, Executive Director, Sumter/Columbia EZ, Dept. of Community Service, 1225 Laurel Street, Columbia, SC 29201.	803–733–8314 (Phone) 803–733–8312 (Fax)
Talmadge Tobias,. City Manager, City of Sumter, P.O. Box 1449, Sumter, SC 29151	803–436–2577 (Phone) 803–436–2615 (Fax)
TN, Knoxville (EZ)	
Jeanette Kelleher, Community Development Administrator, City of Knoxville, Department of Development, P.O. Box 1631, Knoxville, TN 37901.	865–215–2116 (Phone) 865–215–2962 (Fax)
Sherry Kelley Marshall, Executive Director, Partnership for Neighborhood Improvement, P.O. Box 2464, Knoxville, TN 37901.	865–215–4146 (Phone) 865–215–2962 (Fax)
TX, El Paso (EZ–EC)	
Carlos Yerena, Executive Director, El Paso Empowerment Zone, Greater El Paso Chamber of Commerce 10 Civic Center Plaza, El Paso, TX 79901.	915–534–0571 (Phone) 915–534–0513 (Fax)
VA, Norfolk/Portsmouth (EZ–EC)	
Landis Faulcon, Empowerment 2010, 201 Granby Street, Suite 100A, Norfolk, VA 23510	757–624–8650 (Phone) 757–622–4623 (Fax)
WV, Huntington/Ironton, OH (EZ–EC)	
Cathy Burns, Executive Director, Huntington WV-Ironton OH Empowerment Zone, Inc., P.O. Box 1659, Huntington, WV 25717.	304–696–5533 (Phone) 304–696–4465 (Fax)

APPENDIX A.—LIST OF EZS, ECS, AND URBAN ENHANCED ENTERPRISE COMMUNITIES—Continued

Name & City	Phone & fax numbers
URBAN ENHANCED ENTERPRISE COMMUNITIES (4)	
CA, Oakland (EEC)	
Mahlon Harmon, EEC Coordinator, One Stop Capital Shop, 519 17th St., Sixth Floor, Oakland, CA 94612	510–238–2353 (Phone) 510–238–7999 (Fax)
KS, Kansas City and MO, Kansas City (EEC)	
Marlene Nagel, MARC, 600 Broadway 300 Rivergate Center, Kansas City, MO 64105	816–474–4240 (Phone) 816–421–7758 (Fax)
MA, BOSTON (EEC) (SEE EZ)	
TX, Houston (EEC)	
Judith Butler, Mayor's Office, 901 Bagby Street, City Hall, 4th Floor, Houston, TX 77002	713–247–2666 (Phone) 713–247–3985 (Fax)
URBAN ENTERPRISE COMMUNITIES	
AL, Birmingham	
Keith Strother, City of Birmingham, 710 N. 20th Street, City Hall, 3rd Floor, Birmingham, AL 35203	205–254–2870 (Phone) 205–254–7741 (Fax)
AR, Pulaski County	
Henry McHenry, Pulaski County Enterprise Community Alliance, Inc., 400 W. Markham, Suite 705, Little Rock, AR 72201–2424.	501–340–5675 (Phone) 501–340–5680 (Fax)
AZ, Phoenix	
Jennifer Harper, Neighborhood Services Department, City of Phoenix 200 West Washington Street, 4th Floor, Phoenix, AZ 85003–1611.	602–262–4730 (Phone) 602–534–1555 (Fax)
CA, Los Angeles—Huntington Park	
Robert Perez, Manager, Operations Section, Industrial & Commercial, Development Division, Los Angeles Community Development Department, 215 W. 6th St., Third Floor, Los Angeles, CA 90014.	213–485–8161 (Phone) 213–847–0890 (Fax)
CA, San Diego	
Bonnie Contreras, Enterprise Community Coordinator, City of San Diego, 202 C Street, Third Floor, Mail Station 3A, San Diego, CA 92101.	619–236–6846 (Phone) 619–236–6512 (Fax)
CA, San Francisco	
Anna Yee, City of San Francisco, San Francisco Enterprise Community Program, 25 Van Ness Avenue, Suite 700, San Francisco, CA 94102.	415–252–3130 (Phone) 415–252–3110 (Fax)
CO, Denver	
Ernest Hughes, Denver Enterprise Community Coordinator, Denver Community Development Agency, 216 16th Street, Suite 1400, Denver, CO 80202.	720–913–1547 (Phone) 720–913–1800 (Fax)
CT, Bridgeport	
Janice Willis, Director, City of Bridgeport Central Grants Office, 999 Broad St., Bridgeport, CT 06604	203–332–5662 (Phone) 203–332–5657 (Fax)
CT, New Haven	
Diana E. Edmonds, New Haven Enterprise Community Interim Coordinator, 200 Orange Street	203–946–7727 (Phone) 203–946–8049 (Fax)
DE, Wilmington	
Edwina Bell-Mitchell, Wilmington Enterprise Community, Louis L. Redding City/County Building, 800 French Street, 9th Floor, Wilmington, DE 19801.	302–571–4472 (Phone) 302–571–4326 (Fax)
District of Columbia	
Kimmarie Jamison, DCECP Coordinator, 801 N. Capitol St., 6th Floor, Washington, DC 20002	202–442–7203 (Phone) 202–442–7089 (Fax)
FL, Tampa	
Jeanette LaRussa Fenton, Manager, Urban Development, Ybor Service Center 2105 N. Nebraska Avenue, Tampa, FL 33602–2529,.	813–274–7959 (Phone) 813–274–7927 (Fax)
email: hs5j@ci.tampa.fl.us	
GA, Albany	
Julie Duke, city Manager's Office, P.O. Box 447, Albany, GA 31702	912–431–3234 (Phone) 912–431–3223 (Fax)
IA, Des Moines	
Carol Gathright, City of Des Moines, 602 East First Street, Des Moines, IA 50309	515–283–4151 (Phone) 515–237–1713 (Fax)
IL, East St. Louis	
Diane Bonner, Executive Director, CDBG Operations Corporation, 301 River Park Drive, East St. Louis, IL 62201.	618–482–6635 ext. 15 (Phone) 618–271–8194 (Fax)
IL, Springfield	
Cletia Bowen, Director, Office of Economic Development, 231 South Sixth St., Springfield, IL 62701	217–789–2377 (Phone) 217–789–2380 (Fax)
IN, Indianapolis	
Renia Colbert, Project Liaison, Div. of Comm. Development & Financial Services, 200 East Washington, Suite 1841, Indianapolis, IN 46204.	317–327–5869 (Phone) 317–327–5908 (Fax)
KY, Louisville	
Carolyn Gatz, Louisville Empowerment Zone, NIA Center, 2900 West Broadway, Louisville, KY 40211	502–458–6813 (Phone) 502–456–9780 (Fax)
LA, New Orleans	

APPENDIX A.—LIST OF EZS, ECS, AND URBAN ENHANCED ENTERPRISE COMMUNITIES—Continued

Name & City	Phone & fax numbers
Thelma H. French, Executive Assistant to Mayor, Office of Federal and State Programs, 1300 Perdido Street, Room 2E04, New Orleans, LA 70112.	504–565–6445 (Phone) 504–565–6423 (Fax)
LA, Ouachita Parish	
Eric Loewe, Executive Director, Ouachita Enterprise Community, P.O. Box 4268, Monroe, LA 71211	318–329–4031 (Phone) 318–329–4034 (Fax)
MA, Lowell	
Shirley Alejandro, Enterprise Community Organizer, Department of Planning and Development, City Hall—JFK Civic Center, 50 Arcand Drive, Lowell, MA 01852.	978–446–7160 (Phone) 978–970–4262 (Fax)
MA, Springfield	
Miguel Rivas, Director of Neighborhood Programs, Community Development Department, 36 Court Street, Springfield, MA 01103.	413–750–2240 (Phone) 413–787–6027 (Fax)
MI, Flint	
Nancy Jurkiewicz, Corporate Resident Agent, Flint Area Enterprise Community, 805 Welch Blvd., Flint, Michigan 48504.	810–766–7436 ext. 3014 (Phone) 810–766–7351 (Fax)
MI, Muskegon/Muskegon Heights (EC)	
Cathy Brubaker-Clarke, Director, Department of Community and Economic Development, P.O. Box 536, 933 Terrace St., Muskegon, MI 49443–0536.	231–724–6702 (Phone) 231–724–6790 (Fax)
MN, St. Paul	
Jeremy Lenz, Project Manager, City of Saint Paul, Department of Planning and Economic Development, 1200 City Hall Annex, 25 West Fourth Street, Saint Paul, MN 55102.	651–266–6603 (Phone) 651–228–3341 (Fax)
MS, Jackson	
Roosevelt T. Sanders, Executive Director, Jackson Urban Enterprise Community Council, Inc., P.O. Box 10353, Jackson, MS 39289.	601–949–7879 (Phone) 601–981–2407 (Fax)
NC, Charlotte	
Deborah Hazzard, Neighborhood Development Department, 600 East Trade Street, Charlotte, NC 28202	704–336–2106 (Phone) 704–336–2527 (Fax)
NE, Omaha	
Herb Patten, Enterprise Zone Coordinator, Omaha Enterprise Community/Enterprise Zone, Blue LionCentre, 2421 North 24th St., Omaha, NE 68110–2282.	402–444–3514 (Phone) 402–444–3755 (Fax)
NH, Manchester	
William J. Jabjiniak, Planning Department, Enterprise Community Program, One City Hall Plaza, Manchester, NH 03101.	603–624–6450 ext. 5713 (Phone) 603–624–6529 (Fax)
NJ, Newark	
Angela Corbo, EC Coordinator, Department of Administration, City Hall, Room B–16, 920 Broad Street, Newark, NJ 07102.	973–733–4331 (Phone) 973–733–3769 (Fax)
NM, Albuquerque	
Sylvia Fettes, Department of Family & Community Services, P.O. Box 1293, Albuquerque, NM 87103	505–768–2932 (Phone) 505–768–3204 (Fax)
NV, Las Vegas	
Jennifer Padre, EC Coordinator, Community Resources Management, 500 South Grand Central Parkway, P.O. Box 551212, Las Vegas, NV 89155–1212.	702–455–5025 (Phone) 702–455–5038 (Fax)
NY, Albany/Troy/Schenectady	
Anthony Tozzi, Enterprise Community Director, City of Schenectady, Department of Development, Jay Street, Schenectady, NY 12305.	518–382–5054 (Phone) 518–382–5275 (Fax)
NY, Buffalo	
Paula Alcala Rosner, Executive Director, Federal Enterprise Community of Buffalo, Inc., 911 City Hall, Buffalo, NY 14202.	716–851–5032 (Phone) 716–851–4388 (Fax)
NY, Newburgh/Kingston	
Sharon Hyder, The Kingston-Newburgh Enterprise Corp., 62 Grand Street, Newburgh, NY 12550	914–569–1680 ext. 102 (Phone) 914–569–1630 (Fax)
NY, Rochester	
Philip J. Banks, Manager of Business Development, Department of Economic Development, City of Rochester, Room 005A, 30 Church Street, Rochester, NY 14614.	716–428–6965 (Phone) 716–428–6042 (Fax)
OH, Akron	
Jerry Egan, Department of Planning & Urban Development, 166 South High Street, Akron, OH 44308–1628 ...	330–375–2090 (Phone) 330–375–2387 (Fax)
OK, Oklahoma City	
Carl Friend, Oklahoma City Planning Department, 420 West Main Street, Suite 920, Oklahoma City, OK 73102.	405–297–2574 (Phone) 405–297–3796 (Fax)
OR, Portland	
Regena S. Warren, Multnomah County, 421 SW Sixth Avenue, Suite 200, Portland, OR 97204	503–248–3691 ext. 28134 (Phone) 503–248–3379 (Fax)
PA, Harrisburg	
Terri Martini, Director, Department of Building and Housing Development, City of Harrisburg, Suite 206, 10 North Second Street, Harrisburg, PA 17101.	717–255–6408 (Phone) 717–255–6421 (Fax)
PA, Pittsburgh	
Joan Blaustein, Manager, Special Projects, City Planning Dept., City of Pittsburgh, 200 Ross Street, 4th Floor, Pittsburgh, PA 15219.	412–255–2206 (Phone) 412–255–2838 (Fax)

APPENDIX A.—LIST OF EZS, ECS, AND URBAN ENHANCED ENTERPRISE COMMUNITIES—Continued

Name & City	Phone & fax numbers
RI, Providence	
Kim Rose, Enterprise Community Project Director, The Providence Plan, 56 Pine Street, Suite 3B, Providence, RI 02903.	401–455–8880 (Phone) 401–331–6840 (Fax)
SC, Charleston/N. Charleston	
Geona Shaw Johnson, Coordinator, Enterprise Community Program, Department of Housing and Community Development, City of Charleston 75 Calhoun Street, 3rd Floor, Charleston, SC 29401.	843–973–7285 (Phone) 843–720–3836 (Fax)
TN, Memphis	
Joseph C. Gibbs, Economic Development Coordinator, City of Memphis, Business Development Center (BDC), 555 Beale Street, Memphis, TN 38103–3297.	901–526–9300 ext.105 (Phone) 901–525–2357 (Fax)
TN, Nashville	
Paul Johnson, Metropolitan Development and Housing Agency, 701 South Sixth Street, Nashville, TN 37206 ..	615–252–8543 (Phone) 615–252–8559 (Fax)
TX, Dallas	
Mark Obeso, Assistant Director, Housing Department, City of Dallas, 1500 Marilla, 6D North, Dallas, TX 75201	214–670–3601 (Phone) 214–670–0156 (Fax)
TX, San Antonio	
Curley Spears, San Antonio EZ/EC Coordinator, 419 South Main St., Suite 200, San Antonio, TX 78204	210–207–6605 (Phone) 210–886–0006 (Fax)
TX, Waco	
George Johnson, Jr., Assistant City Manager, City of Waco, 300 Austin Avenue, Waco, TX 76701–2570	254–750–5640 (Phone) 254–750–5696 (Direct), 254–750–5880 (Fax)
UT, Ogden	
Karen Thurber, Ogden City Neighborhood Development, 2484 Washington Boulevard, Suite 211, Ogden, UT 84401.	801–629–8943 (Phone) 801–629–8902 (Fax)
VT, Burlington	
Maria Vaivao, EC Coordinator, Office of Community & Economic Development, City Hall, Room 32, Burlington, VT 05401.	802–865–7182 (Phone) 802–865–7024 (Fax)
WA, Seattle	
Ben Wolters, Senior Community Development Specialist, City of Seattle, Office of Economic Development, Seattle Municipal Building, Room 205, Seattle, WA 98104–1826.	206–684–8591 (Phone) 206–684–0379 (Fax)
WA, Tacoma	
Cynthia Spry, Tacoma Pierce Co Chamber of Commerce, 950 Pacific Avenue, Suite 300, P.O. Box 1933, Tacoma, WA 98401–1933.	253–627–2175 (Phone) 253–597–7305 (Fax)
WI, Milwaukee	
Glen Mattison, Enterprise Community Program Officer, City of Milwaukee, Community Block Grant Administration, 200 East Wells Street, City Hall, Room 606, Milwaukee, WI 53202.	414–286–3760 (Phone) 414–286–5003 (Fax)

BILLING CODE 4210–29–P

Appendix B

The forms, which follow, are required for EDI Grant—CEF Pilot application.

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	**3. DATE RECEIVED BY STATE**	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ **New** ☐ **Continuation** ☐ **Revision**

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ — ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ **Yes** **If "Yes," attach an explanation.** ☐ **No**

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION 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. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 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 for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	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.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	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 *only* 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 15.
16.	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.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	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. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Assurances—Non-Construction Programs

OMB Approval No. 0348-0040

Public reporting burden for this collection of information is estimated to average 15 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. Please do not return your completed form to the Office of Management and Budget; send it to the address provided by the sponsoring agency.

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.O. 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 Civil Rights Act of 1968 (42 U.S.C. § 36701 et seq.), as amended, relating to nondiscrimination 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, as applicable, 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 and 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; (e) evaluation of flood hazards in flood plains 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 or OMB Circular No. A-133, Audits of Institutions of Higher Learning and other Non-profit Institutions.

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

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 side for Instructions and Public Reporting burden statement)

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 (yyyy) _____ quarter _____
date of last report (mm/dd/yyyy) _____

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
$

10a. Name and Address of Lobbying Registrant
(if individual, last name, first name, MI)

b. Individuals Performing Services (including address if different from No. 10a.)
(last name, first name, MI)

(attach continuation sheet(s) if necessary)

11. Amount of Payment (check all that apply)
$ _____ ☐ actual ☐ planned

12. Form of Payment (check all that apply)
- ☐ a. cash
- ☐ b. in-kind; specify: nature _____
  value _____

13. Type of Payment (check all that apply)
- ☐ a. retainer
- ☐ b. one-time fee
- ☐ c. commission
- ☐ d. contingent fee
- ☐ e. deferred
- ☐ f. other (specify) _____

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) if necessary)

15. Continuation sheets attached ☐ **Yes** ☐ **No**

16. Information requested through this form is authorized by Sec.319, Pub. L. 101-121, 103 Stat. 750, as amended by sec. 10; Pub. L. 104-65, Stat. 700 (31 U.S.C. 1352). This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the 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 semiannually 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 (mm/dd/yyyy) _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form-LLL (7/97)

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, at 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 any employee of a Member of Congress in connection with a covered Federal action. 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 followup 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 contract 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 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 is 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 the in-kind payment.
13. Check the appropriate box (es). Check all boxes that apply. If other, specify nature.
14. Provide specific and detailed description of the services that the lobbist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just the time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a continuation sheet(s) are 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 the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please do not return your completed form to the Office of Management and Budget; send it to the address provided by the sponsoring agency .

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

Authorized for Local Reproduction
Standard Form-LLL (7/97)

Certification Regarding Debarment and Suspension

U.S. Department of Housing and Urban Development

Certification A: Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief that its principals;

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency;

b. Have not within a three-year period preceding this proposal, been convicted of or had a civil judgment 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/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Certification (A)

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was place when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. 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 the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.

6. The prospective primary 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 entering into this transaction.

7. The prospective primary 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 Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. 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 this eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. 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.

10. Except for transactions authorized under paragraph (6) 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 may terminate this transaction for cause of default.

Certification B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is 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.

Instructions for Certification (B)

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 these 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 this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," 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 lower 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.

Applicant	Date
Signature of Authorized Certifying Official	Title

form **HUD-2992** (3/98)

Certification of Consistency with the EZ/EC Strategic Plan

U.S. Department of Housing and Urban Development

I certify that the proposed activities/projects in this application are consistent with the Strategic Plan of a Federally-designated Empowerment Zone (EZ), Enterprise Community (EC), an Urban Enhanced Enterprise Community, or a Strategic Planning Community.

(Type or clearly print the following information)

Applicant Name _____

Name of the Federal Program to which the applicant is applying _____

Name of EZ/EC _____

I further certify that the proposed activities/projects will be located within the EZ/EC/Urban Enhanced EC or Strategic Planning Community and will serve the EZ/EC/Urban Enhanced EC or Strategic Planning Community residents. (2 points)

Name of the Official Authorized to Certify the EZ/EC _____

Title _____

Signature _____

Date (mm/dd/yyyy) _____

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development

OMB Approval No. 2510-0011 (exp. 3/31/2003)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)

Applicant/Recipient Information

Indicate whether this is an Initial Report ☐ or an Update Report ☐

1. Applicant/Recipient Name, Address, and Phone (include area code): ( ) -	2. Social Security Number or Employer ID Number: - -
3. HUD Program Name	4. Amount of HUD Assistance Requested/Received

5. State the name and location (street address, City and State) of the project or activity:

Part I Threshold Determinations

1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. (For further information see 24 CFR Sec. 4.3).

☐ Yes ☐ No

2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD), involving the project or activity in this application, in excess of $200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9

☐ Yes ☐ No.

If you answered "**No**" to either question 1 or 2, **Stop**! You do not need to complete the remainder of this form. ***However***, you must sign the certification at the end of the report.

Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds.

Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

Department/State/Local Agency Name and Address	Type of Assistance	Amount Requested/Provided	Expected Uses of the Funds

(**Note**: Use Additional pages if necessary.)

Part III Interested Parties. You must disclose:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first)	Social Security No. or Employee ID No.	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

(**Note**: Use Additional pages if necessary.)

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

I certify that this information is true and complete.

Signature: X	Date: (mm/dd/yyyy)

Public reporting burden for this collection of information is estimated to average 2.0 hours 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. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collection displays a valid OMB control number.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §4.38.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions

Overview.

A. Coverage. You must complete this report if:
   (1) You are applying for assistance from HUD for a specific project or activity **and** you have received, or expect to receive, assistance from HUD in excess of $200,000 during the during the fiscal year;
   (2) You are updating a prior report as discussed below; or
   (3) You are submitting an application for assistance to an entity other than HUD, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

B. **Update reports (filed by "Recipients" of HUD Assistance): General**. All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

Line-by-Line Instructions.

Applicant/Recipient Information.
All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
2. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
3. Applicants enter the HUD program name under which the assistance is being requested.
4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.
5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

Part I. Threshold Determinations - Applicants Only

Part I contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

If the answer to ***either*** questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

Part II. Other Government Assistance and Expected Sources and Uses of Funds.

A. Other Government Assistance. This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

   Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

   The following information must be provided:

   1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
   2. State the type of other government assistance (e.g., loan, grant, loan insurance).
   3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
   4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

B. Non-Government Assistance. Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD ***and any other source*** - that have been or are to be, made available for the project or activity. Non-government sources of

funds typically include (but are not limited to) foundations and private contributors.

Part III. Interested Parties.

This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).
   Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

Notes:

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1996, at 63 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, "person" means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

[FR Doc. 00–16544 Filed 6–27–00; 11:16 am]
BILLING CODE 4210–29–C

Federal Register

Friday,
June 30, 2000

Part VII

Department of the Treasury

Fiscal Service

Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies; Notice

4810-35

DEPARTMENT OF THE TREASURY

FISCAL SERVICE
(Dept. Circular 570; 2000 Revision)

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE SURETIES ON FEDERAL BONDS AND AS ACCEPTABLE REINSURING COMPANIES

Effective July 1, 2000

This Circular is published annually, solely for the information of Federal bond-approving officers and persons required to give bonds to the United States. Copies of the Circular and interim changes may be obtained directly from the internet or from the Government Printing Office (202) 512-1800. (Interim changes are published in the FEDERAL REGISTER and on the internet as they occur.) Other information pertinent to Federal sureties may be obtained from the U.S. Department of the Treasury, Financial Management Service, Surety Bond Branch, 3700 East West Highway, Room 6A04, Hyattsville, MD 20782, Telephone (202) 874-6850 or Fax (202) 874-9978.

The most current list of Treasury authorized companies is always available through the Internet at http://www.fms.treas.gov/c570/index.html. In addition, applicable laws, regulations, and application information are also available at the same site.

Please note that the underwriting limitation published herein is on a per bond basis but this does not limit the amount of a bond that a company can write. Companies are allowed to write bonds with a penal sum over their underwriting limitation as long as they protect the excess amount with reinsurance, coinsurance or other methods as specified at 31 CFR 223.10-11. Please refer to footnote (b) at the end of this publication.

The following companies have complied with the law and the regulations of the U.S. Department of the Treasury. Those listed in the front of this Circular are acceptable as sureties and reinsurers on Federal bonds under Title 31 of the United States Code, Sections 9304 to 9308 [See Note (a)]. Those listed in the back are acceptable only as reinsurers on Federal bonds under 31 CFR 223.3(b) [See Note (e)].

If we can be of any assistance, please feel free to contact the Surety Bond Branch at (202) 874-6850.

Judith R. Tillman
Assistant Commissioner
Financial Operations
Financial Management Service

IMPORTANT INFORMATION IS CONTAINED IN THE NOTES AT THE END OF THIS CIRCULAR. PLEASE READ THE NOTES CAREFULLY.

Acadia Insurance Company

BUSINESS ADDRESS: P.O. BOX 9010, Westbrook, ME 04098-5010. PHONE: (207) 772-4300. UNDERWRITING LIMITATION *b/*: $2,086,000. SURETY LICENSES *c, f/*: CT, DE, ME, MD, MA, NH, NY, PA, RI, VT. INCORPORATED IN: Maine.

Acceptance Insurance Company

BUSINESS ADDRESS: 222 South 15th Street, Suite 600 North, Omaha, NE 68102-1616. PHONE: (402) 344-8800. UNDERWRITING LIMITATION *b/*: $2,127,000. SURETY LICENSES *c, f/*: AL, AZ, AR, CO, GA, IL, IN, IA, KY, ME, MI, NE, ND, OH, TN, VA, WI. INCORPORATED IN: Nebraska.

ACCREDITED SURETY AND CASUALTY COMPANY, INC.

BUSINESS ADDRESS: P.O. Box 568529, Orlando, FL 32856-8529. PHONE: (407) 841-8500. UNDERWRITING LIMITATION *b/*: $1,052,000. SURETY LICENSES *c, f/*: AL, CA, CT, DE, FL, GA, ID, IN, IA, KS, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WA, WY. INCORPORATED IN: Florida.

ACSTAR INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 2350, New Britain, CT 06050-2350. PHONE: (860) 224-2000. UNDERWRITING LIMITATION *b/*: $1,707,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Aegis Security Insurance Company

BUSINESS ADDRESS: P.O. Box 3153, Harrisburg, PA 17105. PHONE: (717) 657-9671. UNDERWRITING LIMITATION *b/*: $2,090,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Affiliated FM Insurance Company

BUSINESS ADDRESS: P.O. Box 7500, Johnston, RI 02919-0500. PHONE: (401) 275-3000. UNDERWRITING LIMITATION *b/*: $3,401,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

ALL AMERICA INSURANCE COMPANY

BUSINESS ADDRESS: 800 South Washington Street, Van Wert, OH 45891. PHONE: (419) 238-1010. UNDERWRITING LIMITATION *b/*: $3,586,000. SURETY LICENSES *c, f/*: AZ, CA, CT, GA, IL, IN, IA, KY, MA, MI, NV, NJ, NY, NC, OH, OK, TN, TX, VA. INCORPORATED IN: Ohio.

See Footnotes/Notes at end of Circular

Allegheny Casualty Company

BUSINESS ADDRESS: P.O. Box 1116, Meadville, PA 16335-7116. PHONE: (814) 336-2521. UNDERWRITING LIMITATION ***b/***: $1,329,000. SURETY LICENSES ***c, f/***: AL, CA, DC, FL, ID, IL, IN, LA, MD, MI, MS, MO, NV, NJ, NY, NC, OH, OK, PA, SC, SD, TN, TX, VA, WA, WI, WY. INCORPORATED IN: Pennsylvania.

AMCO Insurance Company

BUSINESS ADDRESS: 701 Fifth Avenue, Des Moines, IA 50391-2007. PHONE: (515) 280-4211. UNDERWRITING LIMITATION ***b/***: $34,364,000. SURETY LICENSES ***c, f/***: AZ, CA, CO, DC, ID, IL, IN, IA, KS, KY, MI, MN, MO, MT, NE, NM, ND, OH, OR, SD, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

American Alliance Insurance Company

BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION ***b/***: $1,008,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

AMERICAN ALTERNATIVE INSURANCE CORPORATION

BUSINESS ADDRESS: 555 College Road East - P.O. Box 5241, Princeton, NJ 08543. PHONE: (609) 243-4200. UNDERWRITING LIMITATION ***b/***: $6,389,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

AMERICAN AND FOREIGN INSURANCE COMPANY

BUSINESS ADDRESS: 9300 Arrowpoint Blvd., P. O. Box 1000, Charlotte, NC 28201-1000. PHONE: (704) 522-2000. UNDERWRITING LIMITATION ***b/***: $7,210,000. SURETY LICENSES ***c, f/***: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

American Automobile Insurance Company

BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION ***b/***: $7,467,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA

BUSINESS ADDRESS: 11222 Quail Roost Drive, Miami, FL 33157. PHONE: (305) 253-2244. UNDERWRITING LIMITATION ***b/***: $6,700,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Florida.

See Footnotes/Notes at end of Circular

American Casualty Company of Reading, Pennsylvania

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION *b/*: $40,667,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

AMERICAN CONTRACTORS INDEMNITY COMPANY 1/

BUSINESS ADDRESS: 9841 Airport Blvd., 9th Floor, Los Angeles, CA 90045. PHONE: (310) 649-0990. UNDERWRITING LIMITATION *b/*: $1,066,000. SURETY LICENSES *c, f/*: AZ, CA, FL, GA, HI, ID, IN, IA, KS, NE, NV, NM, OH, OK, OR, SC, TN, TX, VA, WA, WY. INCORPORATED IN: California.

American Economy Insurance Company

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION *b/*: $38,465,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

American Fire and Casualty Company

BUSINESS ADDRESS: 9450 Seward Road, Fairfield, OH 45014. PHONE: (513) 867-3000. UNDERWRITING LIMITATION *b/*: $9,361,000. SURETY LICENSES *c, f/*: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, NE, NJ, NM, NY, NC, ND, OH, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

American Guarantee and Liability Insurance Company

BUSINESS ADDRESS: 1400 American Lane, Tower I, 19th Floor, Schaumburg, IL 60196-1056. PHONE: (847) 605-6000. UNDERWRITING LIMITATION *b/*: $4,527,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Home Assurance Company

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION *b/*: $282,977,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Insurance Company (The)

BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (402) 346-6000. UNDERWRITING LIMITATION *b/*: $34,659,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

See Footnotes/Notes at end of Circular

AMERICAN INTERNATIONAL INSURANCE COMPANY OF PUERTO RICO

BUSINESS ADDRESS: P.O. Box 10181, San Juan, PR 00908. PHONE: (787) 767-6400. UNDERWRITING LIMITATION *b/*: $4,731,000. SURETY LICENSES *c, f/*: PR. INCORPORATED IN: Puerto Rico.

American International Pacific Insurance Company

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION *b/*: $2,352,000. SURETY LICENSES *c, f/*: AK, CO, CT, DC, IA, ME, MD, MA, MS, MT, NE, NH, ND, RI, SD, UT, VT, WV, WY. INCORPORATED IN: Colorado.

American Interstate Insurance Company

BUSINESS ADDRESS: 2301 Highway 190 West, DeRidder, LA 70634-6005. PHONE: (800) 256-9052. UNDERWRITING LIMITATION *b/*: $1,924,000. SURETY LICENSES *c, f/*: AL, AK, AR, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, VI, WA, WI, WY. INCORPORATED IN: Louisiana.

American Manufacturers Mutual Insurance Company

BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (847) 320-2000. UNDERWRITING LIMITATION *b/*: $27,660,000. SURETY LICENSES *c, f/*: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

American Motorists Insurance Company

BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (847) 320-2000. UNDERWRITING LIMITATION *b/*: $46,615,000. SURETY LICENSES *c, f/*: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

American National Fire Insurance Company

BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION *b/*: $2,777,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

American Re-Insurance Company

BUSINESS ADDRESS: 555 College Road East, P.O. Box 5241, Princeton, NJ 08543. PHONE: (609) 243-4200. UNDERWRITING LIMITATION *b/*: $214,611,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

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AMERICAN RELIABLE INSURANCE COMPANY

BUSINESS ADDRESS: 8655 East Via De Ventura, Scottsdale, AZ 85258. PHONE: (480) 483-8666. UNDERWRITING LIMITATION *b/*: $3,158,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

American Safety Casualty Insurance Company

BUSINESS ADDRESS: 1845 The Exchange, Suite 200, Atlanta, GA 30339. PHONE: (770) 916-1908. UNDERWRITING LIMITATION *b/*: $501,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

American States Insurance Company

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION *b/*: $113,362,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

American Surety Company

BUSINESS ADDRESS: 3901 West 86th Street, Suite 450, Indianapolis, IN 46268. PHONE: (317) 875-8700. UNDERWRITING LIMITATION *b/*: $473,000. SURETY LICENSES *c, f/*: AL, CA, CT, FL, HI, ID, IN, KS, LA, MD, MS, MO, NE, NV, ND, OH, PA, SC, SD, TN, TX, UT, VA, WA. INCORPORATED IN: California.

Amwest Surety Insurance Company

BUSINESS ADDRESS: 5230 Las Virgenes Road, Calabasas, CA 91302. PHONE: (818) 871-2000. UNDERWRITING LIMITATION *b/*: $2,091,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

Antilles Insurance Company

BUSINESS ADDRESS: P.O. Box 9023507, San Juan, PR 00902-3507. PHONE: (787) 721-4900. UNDERWRITING LIMITATION *b/*: $3,236,000. SURETY LICENSES *c, f/*: PR. INCORPORATED IN: Puerto Rico.

Associated Indemnity Corporation

BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION *b/*: $4,051,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

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ATLANTIC ALLIANCE FIDELITY AND SURETY COMPANY

BUSINESS ADDRESS: 8000 Midlantic Drive, Suite 410 North, Mt. Laurel, NJ 08054. PHONE: (856) 439-0066. UNDERWRITING LIMITATION *b/*: $539,000. SURETY LICENSES *c, f/*: AL, CT, DE, DC, FL, GA, IL, IN, KS, KY, MD, MA, MN, MO, NJ, NY, NC, OK, PA, TN, TX. INCORPORATED IN: New Jersey.

Atlantic Mutual Insurance Company

BUSINESS ADDRESS: 100 Wall Street, New York, NY 10005. PHONE: (212) 943-1800. UNDERWRITING LIMITATION *b/*: $53,816,000. SURETY LICENSES *c, f/*: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

ATLAS ASSURANCE COMPANY OF AMERICA

BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (315) 431-6100. UNDERWRITING LIMITATION *b/*: $34,547,000. SURETY LICENSES *c, f/*: AK, AZ, AR, CA, CO, DE, GA, ID, IL, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OR, PA, RI, SD, TN, TX, UT, VT, VA, WA, WV, WY. INCORPORATED IN: New York.

Auto-Owners Insurance Company

BUSINESS ADDRESS: P.O. Box 30660, Lansing, MI 48909-8160. PHONE: (517) 323-1200. UNDERWRITING LIMITATION *b/*: $260,709,000. SURETY LICENSES *c, f/*: AL, AZ, CO, FL, GA, IL, IN, IA, KS, KY, MI, MN, MS, MO, NE, NM, NC, ND, OH, OR, SC, SD, TN, TX, UT, VA, WA, WI. INCORPORATED IN: Michigan.

BANKERS INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 15707, St. Petersburg, FL 33733. PHONE: (727) 823-4000. UNDERWRITING LIMITATION *b/*: $3,144,000. SURETY LICENSES *c, f/*: AL, AZ, AR, CA, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, PA, SC, SD, TN, TX, UT, VA, WA, WV, WY. INCORPORATED IN: Florida.

BITUMINOUS CASUALTY CORPORATION

BUSINESS ADDRESS: 320 - 18th Street, Rock Island, IL 61201-8744. PHONE: (309) 786-5401 x-268. UNDERWRITING LIMITATION *b/*: $16,226,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

BOND SAFEGUARD INSURANCE COMPANY

BUSINESS ADDRESS: 1919 S. Highland Ave., Bldg. A, Suite 300, Lombard, IL 60148. PHONE: (630) 495-9380. UNDERWRITING LIMITATION *b/*: $509,000. SURETY LICENSES *c, f/*: IL, IN, KS, MO, NC, OK, TN, TX. INCORPORATED IN: Illinois.

BRITISH AMERICAN INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 1590, Dallas, TX 75221-1590. PHONE: (214) 443-5500. UNDERWRITING LIMITATION *b/*: $2,023,000. SURETY LICENSES *c, f/*: TX. INCORPORATED IN: Texas.

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Buckeye Union Insurance Company (The)

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION *b/*: $31,044,000. SURETY LICENSES *c, f/*: AK, DC, FL, IL, IN, IA, KS, KY, MD, MI, MO, NY, OH, PA, RI, SD, VA, WV. INCORPORATED IN: Ohio.

Capital City Insurance Company, Inc.

BUSINESS ADDRESS: P.O. Box 212157, Columbia, SC 29221-2157. PHONE: (803) 781-7118. UNDERWRITING LIMITATION *b/*: $1,714,000. SURETY LICENSES *c, f/*: AL, AR, GA, IL, LA, MS, NC, OK, PA, SC, TN, TX, VA, WV. INCORPORATED IN: S. Carolina.

Capitol Indemnity Corporation

BUSINESS ADDRESS: P.O. Box 5900, Madison, WI 53705-0900. PHONE: (608) 231-4450. UNDERWRITING LIMITATION *b/*: $9,157,000. SURETY LICENSES *c, f/*: AL, AZ, AR, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Wisconsin.

Carolina Casualty Insurance Company

BUSINESS ADDRESS: P.O. Box 2575, Jacksonville, FL 32256. PHONE: (904) 363-0900. UNDERWRITING LIMITATION *b/*: $4,314,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Florida.

Centennial Insurance Company

BUSINESS ADDRESS: 100 Wall Street, New York, NY 10005. PHONE: (212) 943-1800. UNDERWRITING LIMITATION *b/*: $13,016,000. SURETY LICENSES *c, f/*: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

CENTRAL MUTUAL INSURANCE COMPANY

BUSINESS ADDRESS: 800 South Washington Street, Van Wert, OH 45891. PHONE: (419) 238-1010. UNDERWRITING LIMITATION *b/*: $16,937,000. SURETY LICENSES *c, f/*: AZ, CA, CT, DE, GA, IL, IN, IA, KY, MA, MI, NV, NH, NJ, NM, NY, NC, OH, OK, PA, TN, TX, VT, VA, WV. INCORPORATED IN: Ohio.

CENTURY SURETY COMPANY

BUSINESS ADDRESS: P.O. Box 163340, Columbus, OH 43216-3340. PHONE: (614) 895-2000. UNDERWRITING LIMITATION *b/*: $1,594,000. SURETY LICENSES *c, f/*: AZ, IN, OH, WV, WI. INCORPORATED IN: Ohio.

CGU INSURANCE COMPANY

BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108-3100. PHONE: (617) 725-6000. UNDERWRITING LIMITATION *b/*: $177,418,000. SURETY LICENSES *c, f/*: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

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Chartwell Insurance Company 2/

BUSINESS ADDRESS: One Canterbury Green, Stamford, CT 06901-2032. PHONE: (203) 353-5500. UNDERWRITING LIMITATION b/: $1,044,000. SURETY LICENSES c, f/: AL, AZ, CA, CO, DE, DC, GA, ID, IL, IN, KY, MD, MI, MN, MS, MT, NE, NM, NY, NC, ND, OH, PA, TX, UT, WA. INCORPORATED IN: Connecticut.

Chartwell Reinsurance Company 2/

CHRYSLER INSURANCE COMPANY

BUSINESS ADDRESS: CIMS:465-20-85, P.O. Box 5168, Southfield, MI 48086-5168. PHONE: (248) 948-3443. UNDERWRITING LIMITATION b/: $20,201,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Michigan.

CHUBB INDEMNITY INSURANCE COMPANY

BUSINESS ADDRESS: 55 Water Street, New York, NY 10041. PHONE: (212) 612-4000. UNDERWRITING LIMITATION b/: $1,759,000. SURETY LICENSES c, f/: AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Cincinnati Casualty Company (The)

BUSINESS ADDRESS: P.O. Box 145496, Cincinnati, OH 45250-5496. PHONE: (513) 870-2000. UNDERWRITING LIMITATION b/: $19,820,000. SURETY LICENSES c, f/: AL, AZ, AR, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NH, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Cincinnati Insurance Company (The)

BUSINESS ADDRESS: P.O. Box 145496, Cincinnati, OH 45250-5496. PHONE: (513) 870-2000. UNDERWRITING LIMITATION b/: $244,564,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

COLONIAL AMERICAN CASUALTY AND SURETY COMPANY

BUSINESS ADDRESS: 300 Saint Paul Place, Baltimore, MD 21202. PHONE: (410) 539-0800. UNDERWRITING LIMITATION b/: $1,867,000. SURETY LICENSES c, f/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Maryland.

COLONIAL SURETY COMPANY

BUSINESS ADDRESS: 50 Chestnut Ridge Road, Montvale, NJ 07645. PHONE: (201) 573-8788. UNDERWRITING LIMITATION b/: $327,000. SURETY LICENSES c, f/: AL, AK, AR, CA, CT, DE, DC, FL, IN, KS, MD, MA, MT, NE, NV, NJ, NM, NY, NC, ND, OR, PA, SD, TN, TX, UT, WV, WY. INCORPORATED IN: Pennsylvania.

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Columbia Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 618, Columbia, MO 65202. PHONE: (573) 474-6193. UNDERWRITING LIMITATION b/: $6,453,000. SURETY LICENSES c, f/: AL, AZ, AR, CO, GA, ID, IL, IN, IA, KS, KY, LA, MN, MS, MO, MT, NE, NM, ND, OK, SD, TN, TX, VA, WA, WV, WY. INCORPORATED IN: Missouri.

Commercial Casualty Insurance Company of Georgia

BUSINESS ADDRESS: P.O. Box 926270, Norcross, GA 30010-6270. PHONE: (770) 729-8101. UNDERWRITING LIMITATION b/: $1,631,000. SURETY LICENSES c, f/: CA, FL, GA, IN, LA, NV, NC, SC, WA. INCORPORATED IN: Georgia.

Commercial Insurance Company of Newark, New Jersey

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $6,368,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

Commercial Union Insurance Company

BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108-3100. PHONE: (617) 725-6000. UNDERWRITING LIMITATION b/: $48,491,000. SURETY LICENSES c, f/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

CONNECTICUT INDEMNITY COMPANY (THE)

BUSINESS ADDRESS: P.O. Box 420, Hartford, CT 06141. PHONE: (860) 674-6600. UNDERWRITING LIMITATION b/: $864,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Consolidated Insurance Company

BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (317) 581-6400. UNDERWRITING LIMITATION b/: $3,400,000. SURETY LICENSES c, f/: IL, IN, IA, KY, MI, OH, TN, WA, WI. INCORPORATED IN: Indiana.

Continental Casualty Company

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION b/: $545,648,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

Continental Insurance Company (The)

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION *b/*: $42,475,000. SURETY LICENSES *c, f/*: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

CONTRACTORS BONDING AND INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 9271, Seattle, WA 98109-0271. PHONE: (206) 622-7053. UNDERWRITING LIMITATION *b/*: $2,156,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

Cooperativa de Seguros Multiples de Puerto Rico

BUSINESS ADDRESS: G.P.O. Box 363846, San Juan, PR 00936-3846. PHONE: (787) 758-8585. UNDERWRITING LIMITATION *b/*: $12,847,000. SURETY LICENSES *c, f/*: PR. INCORPORATED IN: Puerto Rico.

CUMBERLAND CASUALTY & SURETY COMPANY

BUSINESS ADDRESS: 4311 West Waters Ave. #401, Tampa, FL 33614. PHONE: (813) 885-2112. UNDERWRITING LIMITATION *b/*: $481,000. SURETY LICENSES *c, f/*: AL, AR, DE, DC, FL, GA, GU, ID, IN, KS, KY, LA, MD, MA, MO, MT, NE, NV, OR, PA, SC, SD, TN, TX, WA, WV, WY. INCORPORATED IN: Florida.

CUMIS INSURANCE SOCIETY, INC.

BUSINESS ADDRESS: Post Office Box 1084, Madison, WI 53701. PHONE: (608) 238-5851. UNDERWRITING LIMITATION *b/*: $39,102,000. SURETY LICENSES *c, f/*: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

DEVELOPERS INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 19725, Irvine, CA 92613. PHONE: (949) 263-3300. UNDERWRITING LIMITATION *b/*: $556,000. SURETY LICENSES *c, f/*: AK, AZ, CA, HI, ID, IN, NV, NC, OR, SC, UT, VA, WA. INCORPORATED IN: California.

Developers Surety and Indemnity Company

BUSINESS ADDRESS: P.O. Box 19725, Irvine, CA 92613. PHONE: (949) 263-3300. UNDERWRITING LIMITATION *b/*: $581,000. SURETY LICENSES *c, f/*: AK, AZ, CA, CO, DC, HI, ID, IL, IN, IA, KS, MD, MN, MO, MT, NE, NV, NM, ND, OK, OR, SC, SD, UT, WA, WI, WY. INCORPORATED IN: Iowa.

See Footnotes/Notes at end of Circular

DIAMOND STATE INSURANCE COMPANY

BUSINESS ADDRESS: Three Bala Plaza, East, Suite 300, Bala Cynwyd, PA 19004. PHONE: (610) 664-1500. UNDERWRITING LIMITATION *b/*: $4,960,000. SURETY LICENSES *c, f/*: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WY. INCORPORATED IN: Indiana.

Empire Fire and Marine Insurance Company

BUSINESS ADDRESS: 13810 FNB Parkway, Omaha, NE 68154-5202. PHONE: (402) 963-5000. UNDERWRITING LIMITATION *b/*: $6,125,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

EMPLOYERS INSURANCE OF WAUSAU A Mutual Company

BUSINESS ADDRESS: P.O. Box 8017, Wausau, WI 54402-8017. PHONE: (715) 845-5211. UNDERWRITING LIMITATION *b/*: $40,161,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Employers Mutual Casualty Company

BUSINESS ADDRESS: P. O. BOX 712, Des Moines, IA 50303-0712. PHONE: (515) 280-2511. UNDERWRITING LIMITATION *b/*: $55,271,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Employers Reinsurance Corporation

BUSINESS ADDRESS: P.O. Box 2991, Overland Park, KS 66201-1391. PHONE: (913) 676-5200. UNDERWRITING LIMITATION *b/*: $407,202,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Erie Insurance Company

BUSINESS ADDRESS: 100 Erie Insurance Place, Erie, PA 16530. PHONE: (814) 870-2000. UNDERWRITING LIMITATION *b/*: $7,498,000. SURETY LICENSES *c, f/*: DC, IL, IN, KY, MD, NY, NC, OH, PA, TN, VA, WV. INCORPORATED IN: Pennsylvania.

Everest Reinsurance Company

BUSINESS ADDRESS: P.O. Box 830, Liberty Corner, NJ 07938-0830. PHONE: (908) 604-3000. UNDERWRITING LIMITATION *b/*: $101,845,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Delaware.

See Footnotes/Notes at end of Circular

Evergreen National Indemnity Company

BUSINESS ADDRESS: P.O. Box 163340, Columbus, OH 43216-3340. PHONE: (614) 895-1773. UNDERWRITING LIMITATION ***b/***: $1,358,000. SURETY LICENSES ***c, f/***: AL, AK, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI, WY. INCORPORATED IN: Ohio.

Excelsior Insurance Company

BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (603) 352-3221. UNDERWRITING LIMITATION ***b/***: $3,535,000. SURETY LICENSES ***c, f/***: CT, DE, DC, FL, GA, IN, KY, MD, MA, NH, NJ, NY, NC, PA, VT, VA. INCORPORATED IN: New Hampshire.

Executive Risk Indemnity Inc.

BUSINESS ADDRESS: 15 Mountain View Road, Warren, NJ 07059. PHONE: (860) 408-2000. UNDERWRITING LIMITATION ***b/***: $28,458,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

EXPLORER INSURANCE COMPANY (THE)

BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. PHONE: (858) 350-2400. UNDERWRITING LIMITATION ***b/***: $2,582,000. SURETY LICENSES ***c, f/***: AZ, CA, FL, HI, ID, IL, IA, MT, NV, NM, OR, PA, TX, UT, WA. INCORPORATED IN: Arizona.

Factory Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 7500, Johnston, RI 02919-0500. PHONE: (401) 275-3000. UNDERWRITING LIMITATION ***b/***: $247,926,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Rhode Island.

FAR WEST INSURANCE COMPANY

BUSINESS ADDRESS: 5230 Las Virgenes Road, Calabasas, CA 91302. PHONE: (818) 871-2000. UNDERWRITING LIMITATION ***b/***: $650,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OR, PA, RI, SC, SD, TN, TX, UT, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

Farmers Alliance Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 1401, McPherson, KS 67460. PHONE: (316) 241-2200. UNDERWRITING LIMITATION ***b/***: $7,129,000. SURETY LICENSES ***c, f/***: AZ, CO, ID, IN, IA, KS, MI, MN, MO, MT, NE, NM, ND, OH, OK, SD, TX. INCORPORATED IN: Kansas.

Farmington Casualty Company

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION ***b/***: $15,715,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

See Footnotes/Notes at end of Circular

Farmland Mutual Insurance Company

BUSINESS ADDRESS: 1963 Bell Avenue, Des Moines, IA 50315-1030. PHONE: (515) 245-8800. UNDERWRITING LIMITATION ***b/***: $7,350,000. SURETY LICENSES ***c, f/***: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NV, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Federal Insurance Company

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION ***b/***: $297,231,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Indiana.

FEDERATED MUTUAL INSURANCE COMPANY

BUSINESS ADDRESS: 121 East Park Square, Owatonna, MN 55060. PHONE: (507) 455-5200. UNDERWRITING LIMITATION ***b/***: $98,793,000. SURETY LICENSES ***c, f/***: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Fidelity and Casualty Company of New York (The)

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION ***b/***: $22,030,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Fidelity and Deposit Company of Maryland

BUSINESS ADDRESS: 300 Saint Paul Place, Baltimore, MD 21202. PHONE: (410) 539-0800. UNDERWRITING LIMITATION ***b/***: $27,426,000. SURETY LICENSES ***c, f/***: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

FIDELITY AND GUARANTY INSURANCE COMPANY

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION ***b/***: $1,486,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Fidelity and Guaranty Insurance Underwriters, Inc.

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION ***b/***: $3,155,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

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Financial Pacific Insurance Company

BUSINESS ADDRESS: P.O. Box 292220, Sacramento, CA 95829-2220. PHONE: (916) 630-5000. UNDERWRITING LIMITATION *b/*: $1,909,000. SURETY LICENSES *c, f/*: AK, AZ, AR, CA, CO, ID, KS, MO, MT, NE, NV, NM, ND, OR, SD, UT, WA, WI. INCORPORATED IN: California.

Fireman's Fund Insurance Company

BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. PHONE: (415) 899-2000. UNDERWRITING LIMITATION *b/*: $266,374,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: California.

Firemen's Insurance Company of Newark, New Jersey

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION *b/*: $35,083,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

First Community Insurance Company

BUSINESS ADDRESS: 360 Central Avenue, St. Petersburg, FL 33701. PHONE: (727) 823-4000. UNDERWRITING LIMITATION *b/*: $916,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

First Insurance Company of Hawaii, Ltd.

BUSINESS ADDRESS: P.O. Box 2866, Honolulu, HI 96803. PHONE: (808) 527-7777. UNDERWRITING LIMITATION *b/*: $10,301,000. SURETY LICENSES *c, f/*: GU, HI. INCORPORATED IN: Hawaii.

First Liberty Insurance Corporation (The)

BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION *b/*: $1,651,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Iowa.

First National Insurance Company of America

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION *b/*: $7,282,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

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FOLKSAMERICA REINSURANCE COMPANY

BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006. PHONE: (212) 312-2500. UNDERWRITING LIMITATION ***b/***: $29,418,000. SURETY LICENSES ***c, f/***: AL, AZ, AR, CO, DC, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MS, MT, NE, NH, NM, NY, ND, OH, OK, OR, PA, SC, TX, UT, VA, WA, WI. INCORPORATED IN: New York.

GE Reinsurance Corporation

BUSINESS ADDRESS: 475 Half Day Road, Suite 300, Lincolnshire, IL 60069. PHONE: (847) 876-1500. UNDERWRITING LIMITATION ***b/***: $61,890,000. SURETY LICENSES ***c, f/***: AL, AZ, CA, DE, DC, GA, ID, IL, IN, IA, KY, MI, MN, MS, MO, NE, NV, NM, OK, OR, PA, RI, TX, UT, WA, WI. INCORPORATED IN: Illinois.

GENERAL ACCIDENT INSURANCE COMPANY

BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108-3100. PHONE: (617) 725-6000. UNDERWRITING LIMITATION ***b/***: $16,687,000. SURETY LICENSES ***c, f/***: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

General Insurance Company of America

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION ***b/***: $53,270,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Washington.

General Reinsurance Corporation

BUSINESS ADDRESS: 695 East Main Street, Stamford, CT 06904-2349. PHONE: (203) 328-5000. UNDERWRITING LIMITATION ***b/***: $316,574,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Global Surety & Insurance Co.

BUSINESS ADDRESS: 3555 Farnam Street, Omaha, NE 68131. PHONE: (402) 271-2840. UNDERWRITING LIMITATION ***b/***: $2,440,000. SURETY LICENSES ***c, f/***: AZ, CA, CO, NE. INCORPORATED IN: Nebraska.

GLOBE INDEMNITY COMPANY

BUSINESS ADDRESS: 9300 Arrowpoint Blvd.,P.O. Box 1000, Charlotte, NC 28201-1000. PHONE: (704) 522-2000. UNDERWRITING LIMITATION ***b/***: $50,395,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

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Grain Dealers Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 1747, Indianapolis, IN 46206. PHONE: (317) 923-2453. UNDERWRITING LIMITATION *b/*: $2,147,000. SURETY LICENSES *c, f/*: AZ, AR, CO, GA, IL, IN, IA, KS, KY, LA, MN, MS, MO, NE, NV, NM, NC, ND, OH, OK, OR, SD, TN, TX, VA, WA, WI, WY. INCORPORATED IN: Indiana.

GRANITE RE, INC.

BUSINESS ADDRESS: P.O. Box 20683, Oklahoma City, OK 73156. PHONE: (405) 516-5100. UNDERWRITING LIMITATION *b/*: $234,000. SURETY LICENSES *c, f/*: AR, KS, MN, MT, ND, OK, SD. INCORPORATED IN: Oklahoma.

Granite State Insurance Company

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION *b/*: $2,297,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Great American Insurance Company

BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. PHONE: (513) 369-5000. UNDERWRITING LIMITATION *b/*: $100,369,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Great Northern Insurance Company

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION *b/*: $14,471,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

GREAT RIVER INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 152180, Irving, TX 75015-2180. PHONE: (972) 719-2400. UNDERWRITING LIMITATION *b/*: $1,323,000. SURETY LICENSES *c, f/*: AL, AR, GA, KY, LA, MS, SC, TN. INCORPORATED IN: Mississippi.

Greenwich Insurance Company

BUSINESS ADDRESS: One Greenwich Plaza, PO Box 2568, Greenwich, CT 06836-2568. PHONE: (203) 622-5200. UNDERWRITING LIMITATION *b/*: $2,145,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

See Footnotes/Notes at end of Circular

Gulf Insurance Company

BUSINESS ADDRESS: P.O. Box 131771, Dallas, TX 75313-1771. PHONE: (972) 650-2800. UNDERWRITING LIMITATION *b/*: $29,853,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Hanover Insurance Company (The)

BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. PHONE: (508) 853-7200. UNDERWRITING LIMITATION *b/*: $108,573,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

HARCO NATIONAL INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 68309, Schaumburg, IL 60168-0309. PHONE: (847) 734-4100. UNDERWRITING LIMITATION *b/*: $5,477,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Harleysville Mutual Insurance Company

BUSINESS ADDRESS: 355 Maple Avenue, Harleysville, PA 19438-2297. PHONE: (215) 256-5000. UNDERWRITING LIMITATION *b/*: $50,087,000. SURETY LICENSES *c, f/*: AR, CA, CO, CT, DE, DC, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, NJ, NM, NC, OH, PA, SC, TN, TX, UT, VT, VA, WV, WI. INCORPORATED IN: Pennsylvania.

Hartford Accident and Indemnity Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION *b/*: $460,881,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Hartford Casualty Insurance Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION *b/*: $32,540,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Hartford Fire Insurance Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION *b/*: $657,953,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

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Hartford Insurance Company of Illinois

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION b/: $41,657,000. SURETY LICENSES c, f/: IL, PA. INCORPORATED IN: Illinois.

Hartford Insurance Company of the Midwest

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION b/: $7,393,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Hartford Insurance Company of the Southeast

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION b/: $2,802,000. SURETY LICENSES c, f/: CT, FL, GA, LA, PA. INCORPORATED IN: Florida.

Hartford Underwriters Insurance Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION b/: $22,697,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Heritage Mutual Insurance Company 3

BUSINESS ADDRESS: 2800 South Taylor Drive, P.O. Box 58, Sheboygan, WI 53082-0058. PHONE: (920) 458-9131. UNDERWRITING LIMITATION b/: $19,100,000. SURETY LICENSES c, f/: AL, AZ, AR, CO, DE, FL, GA, ID, IL, IN, IA, KS, KY, MI, MN, MS, MO, NE, NV, ND, OH, OR, PA, SD, TN, TX, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Highlands Insurance Company

BUSINESS ADDRESS: 10370 Richmond Avenue, Houston, TX 77042-4123. PHONE: (713) 952-9555 x-8334. UNDERWRITING LIMITATION b/: $5,488,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Texas.

Highlands Underwriters Insurance Company

BUSINESS ADDRESS: 10370 Richmond Avenue, Houston, TX 77042-4123. PHONE: (609) 896-1921. UNDERWRITING LIMITATION b/: $436,000. SURETY LICENSES c, f/: AL, AZ, AR, CA, FL, GA, LA, MS, NM, ND, OK, SD, TX. INCORPORATED IN: Texas.

ICI MUTUAL INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 730, Burlington, VT 05402-0730. PHONE: (802) 863-0096. UNDERWRITING LIMITATION b/: $10,501,000. SURETY LICENSES c, f/: VT. INCORPORATED IN: Vermont.

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Indemnity Company of California

BUSINESS ADDRESS: P.O. Box 19725, Irvine, CA 92613. PHONE: (949) 263-3300. UNDERWRITING LIMITATION *b/*: $961,000. SURETY LICENSES *c, f/*: AK, AZ, CA, HI, ID, NV, OR, SC, UT, VA, WA. INCORPORATED IN: California.

Indemnity Insurance Company of North America

BUSINESS ADDRESS: 1601 Chestnut St., P.O. Box 41484, Philadelphia, PA 19101-1484. PHONE: (215) 761-1000. UNDERWRITING LIMITATION *b/*: $1,364,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Independence Casualty and Surety Company

BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. PHONE: (858) 350-2400. UNDERWRITING LIMITATION *b/*: $1,836,000. SURETY LICENSES *c, f/*: TX. INCORPORATED IN: Texas.

Indiana Insurance Company

BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (317) 581-6400. UNDERWRITING LIMITATION *b/*: $10,437,000. SURETY LICENSES *c, f/*: FL, IL, IN, IA, KY, MI, NJ, OH, TN, WA, WI. INCORPORATED IN: Indiana.

Indiana Lumbermens Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 68600, Indianapolis, IN 46268-0600. PHONE: (800) 428-1441 x-710. UNDERWRITING LIMITATION *b/*: $3,827,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Inland Insurance Company

BUSINESS ADDRESS: P.O. Box 80468, Lincoln, NE 68501. PHONE: (402) 435-4302. UNDERWRITING LIMITATION *b/*: $7,326,000. SURETY LICENSES *c, f/*: AZ, CO, IA, KS, MN, MO, MT, NE, ND, OK, SD, WY. INCORPORATED IN: Nebraska.

Insurance Company of the State of Pennsylvania (The)

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION *b/*: $69,749,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Insurance Company of the West

BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92186-5563. PHONE: (858) 350-2400. UNDERWRITING LIMITATION *b/*: $19,366,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

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Insurance Corporation of New York (The)

BUSINESS ADDRESS: 500 North Broadway, Suite #155, Jericho, NY 11753. PHONE: (516) 822-9410. UNDERWRITING LIMITATION b/: $10,618,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

Insurors Indemnity Company

BUSINESS ADDRESS: P.O. Box 2683, Waco, TX 76702-2683. PHONE: (817) 750-8128. UNDERWRITING LIMITATION b/: $236,000. SURETY LICENSES c, f/: TX. INCORPORATED IN: Texas.

INTEGRAND ASSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 70128, San Juan, PR 00936-8128. PHONE: (787) 781-0707 x-269. UNDERWRITING LIMITATION b/: $3,065,000. SURETY LICENSES c, f/: PR, VI. INCORPORATED IN: Puerto Rico.

Intercargo Insurance Company 10/

International Business & Mercantile REassurance Company

BUSINESS ADDRESS: 307 North Michigan Avenue, Chicago, IL 60601. PHONE: (312) 346-8100. UNDERWRITING LIMITATION b/: $8,194,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

International Fidelity Insurance Company

BUSINESS ADDRESS: One Newark Center, 20th Floor, Newark, NJ 07102-5207. PHONE: (973) 624-7200 x-226. UNDERWRITING LIMITATION b/: $3,898,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Jersey.

ISLAND INSURANCE COMPANY, LIMITED

BUSINESS ADDRESS: P.O. Box 1520, Honolulu, HI 96806-1520. PHONE: (808) 531-1311. UNDERWRITING LIMITATION b/: $11,522,000. SURETY LICENSES c, f/: HI. INCORPORATED IN: Hawaii.

John Deere Insurance Company 8/

Kansas Bankers Surety Company (The)

BUSINESS ADDRESS: P. O. Box 1654, Topeka, KS 66601-1654. PHONE: (785) 228-0000. UNDERWRITING LIMITATION b/: $7,237,000. SURETY LICENSES c, f/: AZ, AR, CO, ID, IL, IN, IA, KS, KY, LA, ME, MI, MN, MS, MO, MT, NE, NM, ND, OK, SD, TN, TX, WI, WY. INCORPORATED IN: Kansas.

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Liberty Insurance Corporation

BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION *b/*: $20,382,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Vermont.

LIBERTY MUTUAL FIRE INSURANCE COMPANY

BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION *b/*: $69,667,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Liberty Mutual Insurance Company

BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION *b/*: $328,368,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Massachusetts.

Lincoln General Insurance Company

BUSINESS ADDRESS: 3350 Whiteford Road, P.O. Box 3709, York, PA 17402-0136. PHONE: (717) 757-0000 x-251. UNDERWRITING LIMITATION *b/*: $1,301,000. SURETY LICENSES *c, f/*: AL, AR, CO, DE, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

LM Insurance Corporation

BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. PHONE: (617) 357-9500. UNDERWRITING LIMITATION *b/*: $1,551,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Lumbermens Mutual Casualty Company

BUSINESS ADDRESS: 1 Kemper Drive, Long Grove, IL 60049-0001. PHONE: (847) 320-2000. UNDERWRITING LIMITATION *b/*: $165,595,000. SURETY LICENSES *c, f/*: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Lyndon Property Insurance Company

BUSINESS ADDRESS: 520 Maryville Centre Drive, Ste 500, St. Louis, MO 63141. PHONE: (314) 275-5200. UNDERWRITING LIMITATION *b/*: $2,665,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

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MARKEL INSURANCE COMPANY

BUSINESS ADDRESS: 4600 Cox Road, Glen Allen, VA 23060. PHONE: (804) 527-2700. UNDERWRITING LIMITATION ***b/***: $6,023,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Massachusetts Bay Insurance Company

BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. PHONE: (508) 853-7200 x-3033. UNDERWRITING LIMITATION ***b/***: $1,885,000. SURETY LICENSES ***c, f/***: AL, AR, CA, CO, CT, DC, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, OH, OR, PA, RI, SC, TN, TX, VT, VA, WA, WV, WI. INCORPORATED IN: New Hampshire.

Merchants Bonding Company (Mutual)

BUSINESS ADDRESS: 2100 Fleur Drive, Des Moines, IA 50321-1158. PHONE: (515) 243-8171. UNDERWRITING LIMITATION ***b/***: $2,599,000. SURETY LICENSES ***c, f/***: AL, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Iowa.

Michigan Millers Mutual Insurance Company

BUSINESS ADDRESS: P. O. Box 30060, Lansing, MI 48909-7560. PHONE: (517) 482-6211 x-765. UNDERWRITING LIMITATION ***b/***: $8,256,000. SURETY LICENSES ***c, f/***: AZ, AR, CA, ID, IL, IN, IA, KS, KY, MI, MN, MO, NE, NY, NC, OH, OK, PA, VA, WI. INCORPORATED IN: Michigan.

Michigan Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 2060, Farmington Hills, MI 48333-2060. PHONE: (248) 615-9000. UNDERWRITING LIMITATION ***b/***: $14,225,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

Mid-Century Insurance Company

BUSINESS ADDRESS: P. O. Box 2478, Terminal Annex, Los Angeles, CA 90051. PHONE: (323) 932-3200. UNDERWRITING LIMITATION ***b/***: $89,560,000. SURETY LICENSES ***c, f/***: AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, SD, TN, TX, UT, VT, VA, WA, WI. INCORPORATED IN: California.

MID-CONTINENT CASUALTY COMPANY

BUSINESS ADDRESS: P.O. Box 1409, Tulsa, OK 74101. PHONE: (918) 587-7221 x-200. UNDERWRITING LIMITATION ***b/***: $6,269,000. SURETY LICENSES ***c, f/***: AL, AZ, AR, CO, IL, IN, IA, KS, LA, MN, MS, MO, MT, NE, NM, ND, OH, OK, OR, SD, TN, TX, UT, WA, WY. INCORPORATED IN: Oklahoma.

Mid-State Surety Corporation

BUSINESS ADDRESS: 102 Kercheval, Grosse Pointe Farms, MI 48236. PHONE: (313) 886-2200. UNDERWRITING LIMITATION ***b/***: $1,059,000. SURETY LICENSES ***c, f/***: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, NE, NV, NJ, NY, NC, ND, OH, PA, SC, SD, TN, TX, UT, VT, VA, WV, WI, WY. INCORPORATED IN: Michigan.

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MIDWESTERN INDEMNITY COMPANY (THE) 4/

BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (513) 576-3200. UNDERWRITING LIMITATION b/: $1,689,000. SURETY LICENSES c, f/: AL, GA, IL, IN, IA, KS, KY, MI, MN, MS, MO, NE, NJ, NY, NC, OH, PA, SC, TN, VA, WV, WI. INCORPORATED IN: Ohio.

Millers Mutual Insurance Association

BUSINESS ADDRESS: 111 East Fourth Street, P.O. Box 9006, Alton, IL 62002-9006. PHONE: (618) 463-3636. UNDERWRITING LIMITATION b/: $2,711,000. SURETY LICENSES c, f/: AL, AR, CO, GA, IL, IN, IA, KS, KY, LA, MI, MN, MS, MO, MT, NE, NM, NC, ND, OH, PA, SD, TN, TX, VA, WI. INCORPORATED IN: Illinois.

Minnesota Surety and Trust Company

BUSINESS ADDRESS: P. O. Box 463, Austin, MN 55912-0463. PHONE: (507) 437-3231. UNDERWRITING LIMITATION b/: $178,000. SURETY LICENSES c, f/: CO, MN, MT, ND, SD, UT. INCORPORATED IN: Minnesota.

Motors Insurance Corporation

BUSINESS ADDRESS: 3044 West Grand Blvd., Detroit, MI 48202. PHONE: (313) 556-5000. UNDERWRITING LIMITATION b/: $127,062,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

Mountbatten Surety Company, Inc. (The)

BUSINESS ADDRESS: 33 Rock Hill Road, Bala Cynwyd, PA 19004. PHONE: (610) 664-2259. UNDERWRITING LIMITATION b/: $1,056,000. SURETY LICENSES c, f/: AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KY, MD, MI, MS, NJ, NY, NC, OH, PA, SC, TN, TX, VA, WV. INCORPORATED IN: Pennsylvania.

MUTUAL SERVICE CASUALTY INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 64035, St. Paul, MN 55164-0035. PHONE: (651) 631-7000. UNDERWRITING LIMITATION b/: $3,188,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

NAC Reinsurance Corporation

BUSINESS ADDRESS: One Greenwich Plaza, P.O. Box 2568, Greenwich, CT 06836-2568. PHONE: (203) 622-5200. UNDERWRITING LIMITATION b/: $38,998,000. SURETY LICENSES c, f/: AL, AK, AZ, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

National American Insurance Company 5/

BUSINESS ADDRESS: 1008 Manvel Avenue, Chandler, OK 74834. PHONE: (405) 258-0804. UNDERWRITING LIMITATION b/: $4,139,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Oklahoma.

See Footnotes/Notes at end of Circular

National Fire Insurance Company of Hartford

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION *b/*: $71,050,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

National Grange Mutual Insurance Company

BUSINESS ADDRESS: 55 West Street, Keene, NH 03431. PHONE: (603) 352-4000. UNDERWRITING LIMITATION *b/*: $26,571,000. SURETY LICENSES *c, f/*: CT, DE, DC, ME, MD, MA, MI, NH, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, WI. INCORPORATED IN: New Hampshire.

National Indemnity Company

BUSINESS ADDRESS: 3024 Harney Street, Omaha, NE 68131-3580. PHONE: (402) 536-3000. UNDERWRITING LIMITATION *b/*: $730,293,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NM, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Nebraska.

National Surety Corporation

BUSINESS ADDRESS: 233 South Wacker Drive, Suite 2000, Chicago, IL 60606-6308. PHONE: (312) 441-5400. UNDERWRITING LIMITATION *b/*: $10,323,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

National Union Fire Insurance Company of Pittsburgh, PA

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION *b/*: $84,011,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

National-Ben Franklin Insurance Company of Illinois

BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. PHONE: (312) 822-5000. UNDERWRITING LIMITATION *b/*: $9,997,000. SURETY LICENSES *c, f/*: DC, FL, IL, IN, IA, KY, MD, MI, MN, NY, NC, ND, RI, SD, WI. INCORPORATED IN: Illinois.

Nationwide Mutual Insurance Company

BUSINESS ADDRESS: One Nationwide Plaza, Columbus, OH 43216. PHONE: (614) 249-7111. UNDERWRITING LIMITATION *b/*: $622,223,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Ohio.

See Footnotes/Notes at end of Circular

Netherlands Insurance Company (The)

BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (603) 352-3221. UNDERWRITING LIMITATION b/: $2,066,000. SURETY LICENSES c, f/: AZ, CA, CT, DC, GA, ID, IL, IN, IA, KY, ME, MD, MA, MI, NV, NH, NJ, NY, NC, OH, RI, SC, TN, UT, VT, VA, WA, WI. INCORPORATED IN: New Hampshire.

New Hampshire Insurance Company

BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. PHONE: (212) 770-7000. UNDERWRITING LIMITATION b/: $40,361,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

NORTH AMERICAN SPECIALTY INSURANCE COMPANY

BUSINESS ADDRESS: 650 Elm Street, Manchester, NH 03101. PHONE: (603) 644-6600. UNDERWRITING LIMITATION b/: $12,638,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

NORTHLAND INSURANCE COMPANY

BUSINESS ADDRESS: P. O. Box 64816, St. Paul, MN 55164-0816. PHONE: (651) 688-4100. UNDERWRITING LIMITATION b/: $17,374,000. SURETY LICENSES c, f/: AL, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

NORTHWESTERN PACIFIC INDEMNITY COMPANY

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (503) 221-4240. UNDERWRITING LIMITATION b/: $3,001,000. SURETY LICENSES c, f/: CA, OR, TX, WA. INCORPORATED IN: Oregon.

NOVA Casualty Company

BUSINESS ADDRESS: 180 Oak Street, Buffalo, NY 14203-1610. PHONE: (716) 856-3722. UNDERWRITING LIMITATION b/: $818,000. SURETY LICENSES c, f/: AZ, DC, FL, GA, IN, IA, MS, NV, NY, ND, PA. INCORPORATED IN: New York.

Ohio Casualty Insurance Company (The)

BUSINESS ADDRESS: 9450 Seward Road, Fairfield, OH 45014. PHONE: (513) 867-3000. UNDERWRITING LIMITATION b/: $89,976,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

See Footnotes/Notes at end of Circular

Ohio Farmers Insurance Company

BUSINESS ADDRESS: P. O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (330) 887-0101. UNDERWRITING LIMITATION *b/*: $67,301,000. SURETY LICENSES *c, f/*: AL, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Oklahoma Surety Company

BUSINESS ADDRESS: P.O. Box 1409, Tulsa, OK 74101. PHONE: (918) 587-7221. UNDERWRITING LIMITATION *b/*: $565,000. SURETY LICENSES *c, f/*: AR, KS, LA, OK, TX. INCORPORATED IN: Oklahoma.

OLD DOMINION INSURANCE COMPANY

BUSINESS ADDRESS: 55 West Street, Keene, NH 03431. PHONE: (904) 739-0873. UNDERWRITING LIMITATION *b/*: $1,122,000. SURETY LICENSES *c, f/*: DE, FL, GA, MD, SC, VA. INCORPORATED IN: Florida.

Old Republic Insurance Company

BUSINESS ADDRESS: P.O. Box 789, Greensburg, PA 15601-0789. PHONE: (724) 834-5000. UNDERWRITING LIMITATION *b/*: $42,111,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Old Republic Surety Company

BUSINESS ADDRESS: P.O. Box 1635, Milwaukee, WI 53201. PHONE: (262) 797-2640. UNDERWRITING LIMITATION *b/*: $2,584,000. SURETY LICENSES *c, f/*: AL, AZ, AR, CA, CO, DC, FL, GA, ID, IL, IN, IA, KS, MD, MN, MS, MO, MT, NE, NV, NM, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

ORISKA INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 855, Oriskany, NY 13424. PHONE: (315) 768-2726. UNDERWRITING LIMITATION *b/*: $335,000. SURETY LICENSES *c, f/*: DC, GA, NY, PA, TN, WV. INCORPORATED IN: New York.

Pacific Employers Insurance Company

BUSINESS ADDRESS: 1601 Chestnut Street, P.O. Box 41484, Philadelphia, PA 19101-1484. PHONE: (215) 761-1000. UNDERWRITING LIMITATION *b/*: $5,289,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Pacific Indemnity Company

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (908) 903-2000. UNDERWRITING LIMITATION *b/*: $53,133,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

See Footnotes/Notes at end of Circular

Pacific Insurance Company, Limited

BUSINESS ADDRESS: 150 Federal Street, Boston, MA 02110. PHONE: (617) 526-7600. UNDERWRITING LIMITATION *b/*: $29,663,000. SURETY LICENSES *c, f/*: CT, HI. INCORPORATED IN: Connecticut.

PARTNER REINSURANCE COMPANY OF THE U.S.

BUSINESS ADDRESS: Two World Financial Ctr, 225 Liberty St., 42nd Fl., New York, NY 10282-1076. PHONE: (212) 416-5700. UNDERWRITING LIMITATION *b/*: $25,991,000. SURETY LICENSES *c, f/*: AL, AK, AZ, CA, CO, DC, GA, IL, IA, MS, NE, NV, NY, OH, SD, TX, WA. INCORPORATED IN: New York.

PARTNERRE INSURANCE COMPANY OF NEW YORK

BUSINESS ADDRESS: Two World Financial Ctr, 225 Liberty St., 42nd Fl., New York, NY 10281-1076. PHONE: (212) 416-5700. UNDERWRITING LIMITATION *b/*: $6,020,000. SURETY LICENSES *c, f/*: AL, AZ, CA, CO, DE, DC, IL, IN, IA, KS, KY, MD, MI, MN, MS, MT, NE, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, WA, WV, WI. INCORPORATED IN: New York.

Peerless Insurance Company

BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. PHONE: (603) 352-3221. UNDERWRITING LIMITATION *b/*: $12,782,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New Hampshire.

Pekin Insurance Company

BUSINESS ADDRESS: 2505 Court Street, Pekin, IL 61558. PHONE: (309) 346-1161 x-2410. UNDERWRITING LIMITATION *b/*: $6,685,000. SURETY LICENSES *c, f/*: IL, IN, IA, WI. INCORPORATED IN: Illinois.

Penn Millers Insurance Company

BUSINESS ADDRESS: P. O. Box P, Wilkes-Barre, PA 18773-0016. PHONE: (570) 822-8111. UNDERWRITING LIMITATION *b/*: $4,551,000. SURETY LICENSES *c, f/*: AL, AR, CT, DC, FL, GA, IL, IN, KS, KY, ME, MD, MA, MS, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA. INCORPORATED IN: Pennsylvania.

Pennsylvania National Mutual Casualty Insurance Company

BUSINESS ADDRESS: P.O. Box 2361, Harrisburg, PA 17105-2361. PHONE: (717) 234-4941. UNDERWRITING LIMITATION *b/*: $16,867,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NJ, NM, NY, NC, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI. INCORPORATED IN: Pennsylvania.

Pioneer General Insurance Company

BUSINESS ADDRESS: 6780 East Hampden Avenue, Denver, CO 80224. PHONE: (303) 758-8122. UNDERWRITING LIMITATION *b/*: $209,000. SURETY LICENSES *c, f/*: CO. INCORPORATED IN: Colorado.

See Footnotes/Notes at end of Circular

PLANET INDEMNITY COMPANY

BUSINESS ADDRESS: 9025 N. Lindbergh Dr., Peoria, IL 61615. PHONE: (309) 692-1000. UNDERWRITING LIMITATION b/: $1,154,000. SURETY LICENSES c, f/: CO, FL, ID, IL, MI, ND, PA. INCORPORATED IN: Illinois.

PREFERRED NATIONAL INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 85122, Richmond, VA 23235-6865. PHONE: (804) 327-1700. UNDERWRITING LIMITATION b/: $2,701,000. SURETY LICENSES c, f/: FL, IL. INCORPORATED IN: Florida.

Progressive Casualty Insurance Company

BUSINESS ADDRESS: 6300 Wilson Mills Road, W33, Mayfield Village, OH 44143-2182. PHONE: (440) 461-5000. UNDERWRITING LIMITATION b/: $69,985,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Protective Insurance Company

BUSINESS ADDRESS: 1099 North Meridian Street, Indianapolis, IN 46204. PHONE: (317) 636-9800. UNDERWRITING LIMITATION b/: $26,969,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Ranger Insurance Company

BUSINESS ADDRESS: P.O. Box 2807, Houston, TX 77252. PHONE: (713) 954-8100. UNDERWRITING LIMITATION b/: $5,523,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Reliance Insurance Company

BUSINESS ADDRESS: Compliance Department - Three Parkway, Philadelphia, PA 19102. PHONE: (215) 864-4000. UNDERWRITING LIMITATION b/: $8,917,000. SURETY LICENSES c, f/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

Reliance Insurance Company of Illinois 6/

BUSINESS ADDRESS: Compliance Department - Three Parkway, Philadelphia, PA 19102. PHONE: (215) 864-4000. UNDERWRITING LIMITATION b/: $2,633,000. SURETY LICENSES c, f/: IL. INCORPORATED IN: Illinois.

See Footnotes/Notes at end of Circular

Reliance National Indemnity Company

BUSINESS ADDRESS: Compliance Department - Three Parkway, Philadelphia, PA 19102. PHONE: (215) 864-4000. UNDERWRITING LIMITATION ***b/***: $840,000. SURETY LICENSES ***c, f/***: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Reliance Surety Company

BUSINESS ADDRESS: Compliance Department - Three Parkway, Philadelphia, PA 19102. PHONE: (215) 864-4000. UNDERWRITING LIMITATION ***b/***: $2,371,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

Republic Western Insurance Company

BUSINESS ADDRESS: 2721 North Central Avenue, Phoenix, AZ 85004-1163. PHONE: (602) 263-6755. UNDERWRITING LIMITATION ***b/***: $7,586,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

RLI Insurance Company

BUSINESS ADDRESS: 9025 N. Lindbergh Drive, Peoria, IL 61615. PHONE: (309) 692-1000. UNDERWRITING LIMITATION ***b/***: $23,905,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Royal Indemnity Company

BUSINESS ADDRESS: 9300 Arrowpoint Boulevard, P.O. Box 1000, Charlotte, NC 28201-1000. PHONE: (704) 522-2000. UNDERWRITING LIMITATION ***b/***: $46,566,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Delaware.

ROYAL INSURANCE COMPANY OF AMERICA

BUSINESS ADDRESS: 1240 E. Diehl Rd., Ste 500, P. O. Box 3144, Naperville, IL 60566. PHONE: (630) 577-9200. UNDERWRITING LIMITATION ***b/***: $32,386,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

SAFECO Insurance Company of America

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION ***b/***: $80,532,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Washington.

See Footnotes/Notes at end of Circular

SAFECO Insurance Company of Illinois

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION *b/*: $14,085,000. SURETY LICENSES *c, f/*: AZ, CO, IL, KS, KY, MD, MI, MN, MS, NE, NM, OH, OR, PA, TN, TX, UT, WI, WY. INCORPORATED IN: Illinois.

SAFECO National Insurance Company

BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. PHONE: (206) 545-5000. UNDERWRITING LIMITATION *b/*: $6,432,000. SURETY LICENSES *c, f/*: CO, KY, MD, MO, NY, ND, SD, UT, WV, WI, WY. INCORPORATED IN: Missouri.

Safeguard Insurance Company

BUSINESS ADDRESS: 9300 Arrowpoint Blvd., P. O. Box 1000, Charlotte, NC 28201-1000. PHONE: (704) 522-2000. UNDERWRITING LIMITATION *b/*: $7,545,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Safety National Casualty Corporation

BUSINESS ADDRESS: 2043 Woodland Parkway, Suite 200, St. Louis, MO 63146. PHONE: (314) 995-5300. UNDERWRITING LIMITATION *b/*: $13,387,000. SURETY LICENSES *c, f/*: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

SCOR REINSURANCE COMPANY

BUSINESS ADDRESS: 2 World Trade Center, New York, NY 10048-2495. PHONE: (212) 390-5200. UNDERWRITING LIMITATION *b/*: $38,183,000. SURETY LICENSES *c, f/*: AL, AK, AZ, CA, DE, DC, HI, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, NE, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, TN, TX, UT, WA, WI. INCORPORATED IN: New York.

Seaboard Surety Company

BUSINESS ADDRESS: 5801 Centennial Way, Baltimore, MD 21209-3653. PHONE: (410) 205-3000. UNDERWRITING LIMITATION *b/*: $14,476,000. SURETY LICENSES *c, f/*: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

SECURITY INSURANCE COMPANY OF HARTFORD

BUSINESS ADDRESS: P.O. BOX 420, HARTFORD, CT 06141-0420. PHONE: (860) 674-6600. UNDERWRITING LIMITATION *b/*: $2,522,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Select Insurance Company

BUSINESS ADDRESS: P.O. Box 131771, Dallas, TX 75313-1771. PHONE: (972) 650-2800. UNDERWRITING LIMITATION *b/*: $3,937,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, DE, DC, FL, GA, ID, IL, IN, IA, KY, LA, MD, MI, MS, MO, MT, NE, NV, NM, NC, OH, OR, SC, SD, TN, TX, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

See Footnotes/Notes at end of Circular

Selective Insurance Company of America

BUSINESS ADDRESS: 40 Wantage Avenue, Branchville, NJ 07890. PHONE: (973) 948-3000. UNDERWRITING LIMITATION b/: $26,314,000. SURETY LICENSES c, f/: AL, CT, DE, DC, GA, IL, IN, IA, KY, MD, MI, MN, MS, MO, NJ, NY, NC, OH, PA, RI, SC, SD, TN, TX, VA, WI. INCORPORATED IN: New Jersey.

Seneca Insurance Company, Inc.

BUSINESS ADDRESS: 160 Water Street, New York, NY 10038-4922. PHONE: (212) 344-3000. UNDERWRITING LIMITATION b/: $4,628,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

SENTINEL INSURANCE COMPANY, LTD. 7/

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115-0000. PHONE: (860) 547-5000. UNDERWRITING LIMITATION b/: $3,860,000. SURETY LICENSES c, f/: CT, HI, SD. INCORPORATED IN: Connecticut.

Sentry Insurance A Mutual Company

BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. PHONE: (715) 346-6000. UNDERWRITING LIMITATION b/: $158,042,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Wisconsin.

Sentry Select Insurance Company 8/

BUSINESS ADDRESS: 3400 80th Street, Moline, IL 61265-5886. PHONE: (800) 447-0633. UNDERWRITING LIMITATION b/: $11,490,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

SERVICE INSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 9729, Bradenton, FL 34206-9729. PHONE: (941) 746-4107. UNDERWRITING LIMITATION b/: $688,000. SURETY LICENSES c, f/: AL, DE, FL, GA, NE, NC, SC, TN. INCORPORATED IN: Florida.

SERVICE INSURANCE COMPANY INC. (THE)

BUSINESS ADDRESS: 80 Main Street, West Orange, NJ 07052. PHONE: (973) 731-7650. UNDERWRITING LIMITATION b/: $142,000. SURETY LICENSES c, f/: NJ. INCORPORATED IN: New Jersey.

Signet Star Reinsurance Company

BUSINESS ADDRESS: 100 Campus Drive, P.O. Box 853, Florham Park, NJ 07932-0853. PHONE: (973) 301-8000. UNDERWRITING LIMITATION b/: $22,118,000. SURETY LICENSES c, f/: AL, AK, AR, CA, CO, DE, DC, FL, ID, IL, IN, IA, KY, LA, MD, MI, MN, MS, NE, NV, NY, NC, ND, OH, OK, OR, PA, RI, SD, TN, TX, UT, VT, WA, WV, WI. INCORPORATED IN: Delaware.

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SOREMA NORTH AMERICA REINSURANCE COMPANY

BUSINESS ADDRESS: 199 Water Street, New York, NY 10038-3526. PHONE: (212) 480-1900. UNDERWRITING LIMITATION ***b/***: $14,497,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, CA, CO, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, WA, WV, WI, WY. INCORPORATED IN: New York.

St. Paul Fire and Marine Insurance Company

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION ***b/***: $141,586,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

ST. PAUL GUARDIAN INSURANCE COMPANY

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION ***b/***: $3,634,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

St. Paul Mercury Insurance Company

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION ***b/***: $6,969,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Minnesota.

Standard Fire Insurance Company (The)

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION ***b/***: $86,373,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Star Insurance Company

BUSINESS ADDRESS: 26600 Telegraph Road, Southfield, MI 48034. PHONE: (248) 358-1100. UNDERWRITING LIMITATION ***b/***: $2,809,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Michigan.

State Automobile Mutual Insurance Company

BUSINESS ADDRESS: 518 East Broad Street, Columbus, OH 43215-3976. PHONE: (614) 464-5000. UNDERWRITING LIMITATION ***b/***: $62,171,000. SURETY LICENSES ***c, f/***: AL, AZ, AR, CO, DC, FL, GA, IL, IN, IA, KS, KY, MD, MI, MN, MS, MO, MT, NE, NC, ND, OH, OK, PA, SC, SD, TN, VA, WV, WI, WY. INCORPORATED IN: Ohio.

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State Farm Fire and Casualty Company

BUSINESS ADDRESS: One State Farm Plaza, Bloomington, IL 61710. PHONE: (309) 766-2311. UNDERWRITING LIMITATION ***b/***: $481,222,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Statewide Insurance Company

BUSINESS ADDRESS: P. O. Box 799, Waukegan, IL 60079-0799. PHONE: (847) 662-0073. UNDERWRITING LIMITATION ***b/***: $939,000. SURETY LICENSES ***c, f/***: AZ, AR, ID, IL, IN, IA, KS, KY, MN, MO, MT, NE, NV, NM, ND, OH, OR, PA, SC, SD, TN, UT, WA, WI, WY. INCORPORATED IN: Illinois.

Suretec Insurance Company

BUSINESS ADDRESS: 10000 Memorial Dr. Suite 330, Houston, TX 77024. PHONE: (713) 812-0800. UNDERWRITING LIMITATION ***b/***: $317,000. SURETY LICENSES ***c, f/***: TX. INCORPORATED IN: Texas.

Surety Company of the Pacific

BUSINESS ADDRESS: P.O. Box 10289, Van Nuys, CA 91410-0289. PHONE: (818) 609-9232. UNDERWRITING LIMITATION ***b/***: $483,000. SURETY LICENSES ***c, f/***: CA. INCORPORATED IN: California.

Swiss Reinsurance America Corporation

BUSINESS ADDRESS: 175 King Street, Armonk, NY 10504. PHONE: (914) 828-8000. UNDERWRITING LIMITATION ***b/***: $124,399,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WI. INCORPORATED IN: New York.

TEXAS PACIFIC INDEMNITY COMPANY

BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. PHONE: (214) 754-0777. UNDERWRITING LIMITATION ***b/***: $895,000. SURETY LICENSES ***c, f/***: AR, TX. INCORPORATED IN: Texas.

TIG Insurance Company

BUSINESS ADDRESS: P.O. BOX 152870, IRVING, TX 75015. PHONE: (972) 831-5000. UNDERWRITING LIMITATION ***b/***: $32,579,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: California.

TRANSATLANTIC REINSURANCE COMPANY

BUSINESS ADDRESS: 80 Pine Street, New York, NY 10005. PHONE: (212) 770-2000. UNDERWRITING LIMITATION ***b/***: $127,621,000. SURETY LICENSES ***c, f/***: AK, AZ, AR, CA, CO, DE, DC, GA, ID, IL, IN, IA, KS, KY, LA, MI, MN, MS, NE, NV, NJ, NM, NY, OH, OK, PA, SD, UT, WA, WI. INCORPORATED IN: New York.

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Travelers Casualty and Surety Company

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION ***b/***: $223,185,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Travelers Casualty and Surety Company of America

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION ***b/***: $50,973,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Travelers Casualty and Surety Company of Illinois

BUSINESS ADDRESS: 215 Shuman Boulevard, Naperville, IL 60563. PHONE: (860) 277-0111. UNDERWRITING LIMITATION ***b/***: $35,524,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Travelers Indemnity Company (The)

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION ***b/***: $193,862,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Travelers Indemnity Company of Connecticut (The)

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION ***b/***: $25,195,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

Trinity Universal Insurance Company

BUSINESS ADDRESS: P.O. Box 655028, Dallas, TX 75265-5028. PHONE: (214) 360-8000. UNDERWRITING LIMITATION ***b/***: $51,536,000. SURETY LICENSES ***c, f/***: AL, AZ, AR, CA, CO, GA, ID, IL, IN, IA, KS, KY, LA, MI, MS, MO, NM, OH, OK, TN, TX, UT, WA, WI, WY. INCORPORATED IN: Texas.

Trumbull Insurance Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION ***b/***: $2,987,000. SURETY LICENSES ***c, f/***: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Connecticut.

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Twin City Fire Insurance Company

BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. PHONE: (860) 547-5000. UNDERWRITING LIMITATION b/: $12,308,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Underwriters Indemnity Company

BUSINESS ADDRESS: 9025 N. Lindbergh Dr., Peoria, IL 61615. PHONE: (309) 692-1000. UNDERWRITING LIMITATION b/: $501,000. SURETY LICENSES c, f/: AL, AR, DE, DC, GA, ID, IL, IN, KS, KY, MS, MO, NE, NM, NC, ND, OR, PA, SC, SD, TN, TX, UT, WA, WV, WY. INCORPORATED IN: Texas.

UNDERWRITERS REINSURANCE COMPANY

BUSINESS ADDRESS: P.O. Box 4030, Woodland Hills, CA 91365. PHONE: (818) 878-9500. UNDERWRITING LIMITATION b/: $31,491,000. SURETY LICENSES c, f/: AZ, CA, CT, DE, DC, ID, IL, IN, IA, MI, MS, NE, NV, NH, NJ, NM, NY, OH, PA, PR, RI, SD, TX, UT, WI, WY. INCORPORATED IN: New Hampshire.

Union Insurance Company

BUSINESS ADDRESS: P.O. Box 80439, Lincoln, NE 68501-0439. PHONE: (402) 423-7688. UNDERWRITING LIMITATION b/: $1,153,000. SURETY LICENSES c, f/: AR, CO, DC, ID, IA, KS, MD, MN, MS, MO, MT, NE, NC, ND, OK, SD, TN, TX, UT, VA, WA, WY. INCORPORATED IN: Nebraska.

United Coastal Insurance Company 9/

BUSINESS ADDRESS: 233 Main Street P.O. Box 2350, NEW BRITAIN, CT 06050-2350. PHONE: (860) 223-5000. UNDERWRITING LIMITATION b/: $2,699,000. SURETY LICENSES c, f/: AZ. INCORPORATED IN: Arizona.

United Fire & Casualty Company

BUSINESS ADDRESS: P.O. Box 73909, Cedar Rapids, IA 52407-3909. PHONE: (319) 399-5700. UNDERWRITING LIMITATION b/: $17,969,000. SURETY LICENSES c, f/: AK, AZ, AR, CA, CO, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, OR, SC, SD, TN, TX, UT, WA, WV, WI, WY. INCORPORATED IN: Iowa.

UNITED NATIONAL INSURANCE COMPANY

BUSINESS ADDRESS: Three Bala Plaza East, Suite 300, Bala Cynwyd, PA 19004. PHONE: (610) 664-1500. UNDERWRITING LIMITATION b/: $13,272,000. SURETY LICENSES c, f/: PA. INCORPORATED IN: Pennsylvania.

United Pacific Insurance Company

BUSINESS ADDRESS: Compliance Department - Three Parkway, Philadelphia, PA 19102. PHONE: (215) 864-4000. UNDERWRITING LIMITATION b/: $3,032,000. SURETY LICENSES c, f/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Pennsylvania.

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United States Fidelity and Guaranty Company

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION *b/*: $103,878,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Maryland.

UNITED STATES FIRE INSURANCE COMPANY

BUSINESS ADDRESS: 305 Madison Avenue, Morristown, NJ 07960. PHONE: (973) 490-6600. UNDERWRITING LIMITATION *b/*: $36,693,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

United States Surety Company

BUSINESS ADDRESS: P.O. Box 5605, Timonium, MD 21094. PHONE: (410) 453-9522. UNDERWRITING LIMITATION *b/*: $224,000. SURETY LICENSES *c, f/*: DE, DC, MD, PA. INCORPORATED IN: Maryland.

UNITED SURETY AND INDEMNITY COMPANY

BUSINESS ADDRESS: P.O. Box 2111, San Juan, PR 00922-2111. PHONE: (787) 273-1818. UNDERWRITING LIMITATION *b/*: $2,665,000. SURETY LICENSES *c, f/*: PR. INCORPORATED IN: Puerto Rico.

UNIVERSAL BONDING INSURANCE COMPANY

BUSINESS ADDRESS: 518 Stuyvesant Avenue, Lyndhurst, NJ 07071. PHONE: (201) 438-7223. UNDERWRITING LIMITATION *b/*: $1,198,000. SURETY LICENSES *c, f/*: NJ, NY, PA. INCORPORATED IN: New Jersey.

UNIVERSAL INSURANCE COMPANY

BUSINESS ADDRESS: G.P.O. Box 71338, San Juan, PR 00936. PHONE: (787) 793-7202. UNDERWRITING LIMITATION *b/*: $6,320,000. SURETY LICENSES *c, f/*: PR. INCORPORATED IN: Puerto Rico.

Universal Surety Company

BUSINESS ADDRESS: P.O. Box 80468, Lincoln, NE 68501. PHONE: (402) 435-4302. UNDERWRITING LIMITATION *b/*: $4,864,000. SURETY LICENSES *c, f/*: AZ, AR, CO, ID, IL, IA, KS, MI, MN, MO, MT, NE, NM, ND, OH, OK, OR, SD, UT, WA, WI, WY. INCORPORATED IN: Nebraska.

Universal Surety of America

BUSINESS ADDRESS: P.O. Box 1068, Houston, TX 77251-1068. PHONE: (713) 722-4600. UNDERWRITING LIMITATION *b/*: $1,634,000. SURETY LICENSES *c, f/*: AL, AK, AR, CA, CO, DE, DC, FL, GA, ID, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Texas.

See Footnotes/Notes at end of Circular

UNIVERSAL UNDERWRITERS INSURANCE COMPANY

BUSINESS ADDRESS: 7045 College Boulevard, Overland Park, KS 66211. PHONE: (913) 339-1000. UNDERWRITING LIMITATION *b/*: $39,870,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Kansas.

Utica Mutual Insurance Company

BUSINESS ADDRESS: P.O. Box 530, Utica, NY 13503-0530. PHONE: (315) 734-2000. UNDERWRITING LIMITATION *b/*: $34,928,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

VAN TOL SURETY COMPANY, INCORPORATED

BUSINESS ADDRESS: 424 Fifth Street, Brookings, SD 57006. PHONE: (605) 692-6294. UNDERWRITING LIMITATION *b/*: $272,000. SURETY LICENSES *c, f/*: SD. INCORPORATED IN: South Dakota.

Vigilant Insurance Company

BUSINESS ADDRESS: 55 Water Street, New York, NY 10041. PHONE: (212) 612-4000. UNDERWRITING LIMITATION *b/*: $32,988,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

Washington International Insurance Company

BUSINESS ADDRESS: 300 Park Boulevard, Suite 500, Itasca, IL 60143-2625. PHONE: (630) 227-4700. UNDERWRITING LIMITATION *b/*: $2,610,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Arizona.

West American Insurance Company

BUSINESS ADDRESS: 9450 Seward Road, Fairfield, OH 45014. PHONE: (513) 867-3000. UNDERWRITING LIMITATION *b/*: $59,287,000. SURETY LICENSES *c, f/*: AL, AZ, AR, CO, CT, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, SC, SD, TN, TX, UT, VA, WA, WV, WI, WY. INCORPORATED IN: Indiana.

Westchester Fire Insurance Company

BUSINESS ADDRESS: 1601 Chestnut Street, P. O. Box 41484, Philadelphia, PA 19101-1484. PHONE: (215) 761-1000. UNDERWRITING LIMITATION *b/*: $18,101,000. SURETY LICENSES *c, f/*: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: New York.

See Footnotes/Notes at end of Circular

Western Insurance Company

BUSINESS ADDRESS: P.O. Box 21030, Reno, NV 89515. PHONE: (775) 829-6650. UNDERWRITING LIMITATION b/: $402,000. SURETY LICENSES c, f/: NV. INCORPORATED IN: Nevada.

Western Surety Company

BUSINESS ADDRESS: P.O. Box 5077, Sioux Falls, SD 57117-5077. PHONE: (605) 336-0850. UNDERWRITING LIMITATION b/: $17,344,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: South Dakota.

Westfield Insurance Company

BUSINESS ADDRESS: P. O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (330) 887-0101. UNDERWRITING LIMITATION b/: $35,455,000. SURETY LICENSES c, f/: AL, AZ, AR, CO, DE, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Ohio.

Westfield National Insurance Company

BUSINESS ADDRESS: P. O. Box 5001, Westfield Center, OH 44251-5001. PHONE: (330) 887-0101. UNDERWRITING LIMITATION b/: $9,829,000. SURETY LICENSES c, f/: CA, IA, KY, ND, OH. INCORPORATED IN: Ohio.

Westport Insurance Corporation

BUSINESS ADDRESS: P.O. Box 2979, Overland Park, KS 66201-1379. PHONE: (913) 676-5270. UNDERWRITING LIMITATION b/: $16,431,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Worcester Insurance Company

BUSINESS ADDRESS: 120 Front Street, Ste 500, Worcester, MA 01608-1408. PHONE: (508) 751-8100. UNDERWRITING LIMITATION b/: $9,920,000. SURETY LICENSES c, f/: CT, MA, MI, NH, NY, RI, VT. INCORPORATED IN: Massachusetts.

XL Specialty Insurance Company 10/

BUSINESS ADDRESS: 1450 East American Lane, 20th Floor, Schaumburg, IL 60173. PHONE: (847) 517-2990. UNDERWRITING LIMITATION b/: $2,181,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, GU, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: Illinois.

Zurich American Insurance Company

BUSINESS ADDRESS: 1400 American Lane, Tower 1, 19th Floor, Schaumburg, IL 60196-1056. PHONE: (847) 605-6000. UNDERWRITING LIMITATION b/: $206,304,000. SURETY LICENSES c, f/: AL, AK, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VT, VA, VI, WA, WV, WI, WY. INCORPORATED IN: New York.

See Footnotes/Notes at end of Circular

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE REINSURING COMPANIES UNDER SECTION 223.3(b) OF TREASURY CIRCULAR NO. 297, REVISED SEPTEMBER 1, 1978 [See Note (e)]

Charter Oak Fire Insurance Company (The)

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: $16,537,000.

Generali - U.S. Branch

BUSINESS ADDRESS: One Liberty Plaza, New York, NY 10006. PHONE: (212) 602-7600. UNDERWRITING LIMITATION b/: $10,067,000.

GERLING GLOBAL REINSURANCE CORPORATION OF AMERICA

BUSINESS ADDRESS: 717 Fifth Avenue, New York, NY 10022. PHONE: (212) 754-7500. UNDERWRITING LIMITATION b/: $51,953,000.

NATIONAL REINSURANCE CORPORATION 11/

BUSINESS ADDRESS: 695 East Main St., P.O. Box 10350, Stamford, CT 06904-2350. PHONE: (203) 328-5000. UNDERWRITING LIMITATION b/: $31,663,000.

NORTHBROOK PROPERTY AND CASUALTY INSURANCE COMPANY 12/

BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. PHONE: (651) 310-7911. UNDERWRITING LIMITATION b/: $23,301,000.

Odyssey Reinsurance Corporation

BUSINESS ADDRESS: 300 First Stamford Place, Stamford, CT 06902. PHONE: (203) 977-8000. UNDERWRITING LIMITATION b/: $32,234,000.

Phoenix Insurance Company (The)

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: $69,437,000.

TRAVELERS INDEMNITY COMPANY OF AMERICA (THE)

BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183-6014. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: $10,951,000.

Travelers Indemnity Company of Illinois (The)

BUSINESS ADDRESS: 215 Shuman Boulevard, Naperville, IL 60563. PHONE: (860) 277-0111. UNDERWRITING LIMITATION b/: $7,413,000.

ZENITH INSURANCE COMPANY 13/

BUSINESS ADDRESS: 21255 Califa Street, Woodland Hills, CA 91367. PHONE: (818) 713-1000 UNDERWRITING LIMITATION b/: $19,009,000.

See Footnotes/Notes at end of Circular

FOOTNOTES

1 AMERICAN CONTRACTORS INDEMNITY COMPANY is required by state law to conduct business in the state of Texas as TEXAS BONDING COMPANY, Assumed Name of AMERICAN CONTRACTORS INDEMNITY COMPANY.

2 Chartwell Reinsurance Company changed its name to Chartwell Insurance Company, effective 3/6/00. In addition, Chartwell Insurance Company changed its state of incorporation from Minnesota to Connecticut, effective 3/6/00.

3 This Company's name is very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company and the state of incorporation are exactly as they appear in this Circular.

4 This Company's name is very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company and the state of incorporation are exactly as they appear in this Circular.

5 National American Insurance Company changed its state of incorporation from Nebraska to Oklahoma, effective 5/19/00.

6 Reliance Insurance Company of Illinois is an approved surplus lines carrier. Such approval by the State Insurance Department may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the state. Questions related to this, may be directed to the appropriate State Insurance Department. Refer to the list of the Departments at the end of this publication.

7 SENTINEL INSURANCE COMPANY, LTD. changed its state of incorporation from Hawaii to Connecticut, effective 10/14/99.

8 John Deere Insurance Company changed its name to Sentry Select Insurance Company, effective 9/30/99.

9 United Coastal Insurance Company is an approved surplus lines carrier. Such approval by the State Insurance Department may indicate that the Company is authorized to write surety in a particular state, even though the Company is not licensed in the state. Questions related to this, may be directed to the appropriate State Insurance Department. Refer to the list of the Departments at the end of this publication.

10 Intercargo Insurance Company changed its name to XL Specialty, effective 11/1/99.

11 NATIONAL REINSURANCE CORPORATION'S Treasury authority has changed from an acceptable surety on Federal bonds to an acceptable reinsurer on Federal bonds, effective 7/1/00.

12 NORTHBROOK PROPERTY AND CASUALTY INSURANCE COMPANY'S Treasury authority has changed from an acceptable surety on Federal bonds to an acceptable reinsurer on Federal bonds, effective 7/1/00.

13 This Company's name is very similar to another company that is NOT certified by this Department. Please ensure that the name of the Company and the state of incorporation are exactly as they appear in this Circular. Do not hesitate to contact the Company to verify the authenticity of a bond.

See Footnotes/Notes at end of Circular

NOTES

(a) All Certificates of Authority expire June 30, and are renewable July 1, annually. Companies holding Certificates of Authority as acceptable sureties on Federal bonds are also acceptable as reinsuring companies.

(b) The Underwriting Limitations published herein are on a per bond basis. Treasury requirements do not limit the penal sum (face amount) of bonds which surety companies may provide. However, when the penal sum exceeds a company's Underwriting Limitation, the excess must be protected by co-insurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised September 1, 1978 (31 CFR Section 223.10, Section 223.11). Treasury refers to a bond of this type as an Excess Risk. When Excess Risks on bonds in favor of the United States are protected by reinsurance, such reinsurance is to be effected by use of a Federal reinsurance form to be filed with the bond or within 45 days thereafter. In protecting such excess risks, the underwriting limitation in force on the day in which the bond was provided will govern absolutely. For further assistance, contact the Surety Bond Branch at (202) 874-6850.

(c) A surety company must be licensed in the State or other area in which it provides a bond, but need not be licensed in the State or other area in which the principal resides or where the contract is to be performed [28 Op. Atty. Gen. 127, Dec. 24, 1909; 31 CFR Section 223.5 (b)]. The term "other area" includes the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands.

License information in this Circular is provided to the Treasury Department by the companies themselves. For updated license information, you may contact the company directly or the applicable State Insurance Department. Refer to the list of state insurance departments at the end of this publication. For further assistance, contact the Surety Bond Branch at (202) 874-6850.

(d) FEDERAL PROCESS AGENTS: Treasury approved surety companies are required to appoint Federal process agents in accord with 31 U.S.C. 9306 and 31 CFR 224 in the following districts: Where the principal resides; where the obligation is to be performed; and in the District of Columbia where the bond is returnable or filed. No process agent is required in the State or other area where the company is incorporated (31 CFR Section 224.2). The name and address of a particular surety's process agent in a particular Federal Judicial District may be obtained from the Clerk of the U.S. District Court in that district. (The appointment documents are on file with the clerks.) (NOTE: A surety company's underwriting agent who furnishes its bonds may or may not be its authorized process agent.)

SERVICE OF PROCESS: Process should be served on the Federal process agent appointed by a surety in a judicial district, except where the appointment of such agent is pending or during the absence of such agent from the district. Only in the event that an agent has not been duly appointed, or the appointment is pending, or the agent is absent from the district, should process be served directly on the Clerk of the court pursuant to the provisions of 31 U.S.C. 9306.

(e) Companies holding Certificates of Authority as acceptable reinsuring companies are acceptable only as reinsuring companies on Federal bonds.

(f) Some companies may be approved surplus lines carriers in various states. Such approval may indicate that the company is authorized to write surety in a particular state, even though the company is not licensed in the state. Questions related to this may be directed to the appropriate State Insurance Department. Refer to the list of state insurance departments at the end of this publication.

See Footnotes/Notes at end of Circular

STATE INSURANCE DEPARTMENTS	TELEPHONE NO.
Alabama, Montgomery 36104	(334) 269-3550
Alaska, Juneau 99811-0805	(907) 465-2515
Arizona, Phoenix 85018-7256	(602) 912-8400
Arkansas, Little Rock 72201-1914	(501) 371-2600
California, Sacremento 95814	(916) 492-3500
Colorado, Denver 80202	(303) 894-7499
Connecticut, Hartford 06142-0816	(860) 297-3800
Delaware, Dover 19904	(302) 739-4251
D. C., Washington 20002	(202) 727-8000
Florida, Tallahasse 32399-0300	(850) 922-3101
Georgia, Atlanta 30334	(404) 656-2056
Hawaii, Honolulu 96811-3614	(808) 586-2790
Idaho, Boise 83720-0043	(208) 334-4250
Illinois, Springfield 62767-0001	(217) 785-0116
Indiana, Indianapolis 46204-2787	(317) 232-2385
Iowa, Des Moines 50319	(515) 281-5705
Kansas, Topeka 66612-1678	(785) 296-7801
Kentucky, Frankfort 40602-0517	(502) 564-6027
Louisiana, Baton Rouge 70802	(504) 342-5423
Maine, Augusta 04333-0034	(207) 624-8475
Maryland, Baltimore 21202-2272	(410) 468-2090
Massachusetts, Boston 02210-2223	(617) 521-7794
Michigan, Lansing 48933-1020	(517) 373-9273
Minnesota, St. Paul 55101	(612) 296-6848
Mississippi, Jackson 39201	(601) 359-3569
Missouri, Jefferson City 65102-0690	(573) 751-4126
Montana, Helena 59601	(406) 444-2040
Nebraska, Lincoln 68508	(402) 471-2201
Nevada, Carson City 89706-0661	(702) 687-4270
New Hampshire, Concord 03301	(603) 271-2261
New Jersey, Trenton 08625	(609) 292-5363
New Mexico, Sante Fe 87504-1269	(505) 827-4601
New York, New York 10004-2319	(212) 480-2289
North Carolina, Raleigh 27611	(919) 733-7349
North Dakota, Bismarck 58505-0320	(701) 328-2440
Ohio, Columbus 43215-1067	(614) 644-2658
Oklahoma, Oklahoma City 73118	(405) 521-2686
Oregon, Salem 97310-0700	(503) 947-7980
Pennsylvania, Harrisburg 17120	(717) 783-0442
Puerto Rico, Santurce 00910-8330	(787) 722-8686
Rhode Island, Providence 02903-4233	(401) 222-2223
South Carolina, Columbia 29202-3105	(803) 737-6160
South Dakota, Pierre 57501-2000	(605) 773-3563
Tennessee, Nashville 37243-0565	(615) 741-2241
Texas, Austin 78714-9104	(512) 463-6464
Utah, Salt Lake City 84114-1201	(801) 538-3800
Vermont, Montpelier 05620-3101	(802) 828-3301
Virginia, Richmond 23218	(804) 371-9694
Virgin Islands, St. Thomas 00802	(340) 773-6449
Washington, Olympia 98504-0255	(360) 753-7301
West Virginia, Charleston 25305-0540	(304) 558-3354
Wisconsin, Madison 53707-7873	(608) 267-1233
Wyoming, Cheyenne 82002-0440	(307) 777-7401

ee Footnotes/Notes at end of Circular

[FR Doc. 00–16490 Filed 6–29–00; 8:45 am]
BILLING CODE 4810–35–C

Federal Register

Friday,
June 30, 2000

Part VIII

Department of the Interior

Bureau of Indian Affairs

Higher Education Workforce Project; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Higher Education Workforce Project

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approval of a demonstration project final plan.

SUMMARY: On March 10, 2000, the Bureau of Indian Affairs (BIA) published a notice in the **Federal Register** (65 FR 13170), to allow Haskell Indian Nations University to conduct a demonstration project to test the feasibility and desirability of a new personnel management policies and procedures. This notice announces the approval of a final plan of the demonstration project for Haskell Indian Nations University.

DATES: Implementation of this demonstration project will begin on October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Karen Swisher, Haskell Indian Nations University, Lawrence, Kansas 66046, 785–749–8497; e-mail address: kswisher@ross1.cc.haskell.edu.

SUPPLEMENTARY INFORMATION:

1. Overview

Public Law 105–337, Haskell Indian Nations University (HINU) and Southwestern Indian Polytechnic Institute (SIPI) Administrative Systems Act of 1998, Oct. 31, 1998, allows HINU to conduct a demonstration project to test the feasibility and desirability of new personnel management policies and procedures. Public Law 105–337 finds that the provision of culturally sensitive curricula for higher education programs at Haskell Indian Nations University is consistent with the commitment of the Federal Government to the fulfillment of treaty obligations to Indian tribes through the principle of self-determination and the use of Federal resources. It further finds that giving a greater degree of autonomy to the institution while maintaining it as an integral part of the Bureau of Indian Affairs will facilitate the transition of Haskell Indian Nations University to a 4-year university. This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The 31 total comments received on the first notice in the **Federal Register**, March 10, were valuable guides to revision of the Higher Education Workforce Project (HEWP). Three speakers commented on the **Federal Register** notice at the April 24 public hearing, and 28 letters were received by the deadline of May 8. Fourteen identical letters opposed the demonstration in general terms. A number of commentors submitted a form letter which arrived on May 9, and its concerns although not official comments, were also considered. Written comments represented input from both Haskell employees and alumni. Most changes to the demonstration project derive from these public comments.

The majority of the changes are in the area of Contribution-based Compensation and Assessment System (CCAS). Major changes include the decision that the General Increase will be given to all employees annually regardless of CCAS assessment scores. Within-Grade Increases will also continue. And the General Schedule salary structure will be maintained as the framework for the project's broadbanding system, revisions were made to clarify Indian preference, veterans' preference, merit principles, and Equal Employment Opportunity (EEO).

The comments highlighted instances of misunderstanding with the present personnel system as well as the project innovations. They underscored the importance of providing training on the Demonstration Project to supervisors and employees. The substance of all comments received has been conveyed to the Office of Indian Education Programs (OIEP) and the HEWP Steering Committee, in the event that policies, processes, and training sessions may benefit from such perspectives. The following is a summary of these written and oral comments by topical areas and a response to each.

2. Summary of Comments

A. Participating Employees, II.E.

Comments. One comment suggested only faculty should go under the demonstration project. The commenter stated that hiring problems are a problem in the area of Instruction, so employees in other areas should be exempt from the demonstration.

Response. Public Law 105–337 Sec.4 Authority (h) (1) states that all applicants for employment with, all eligible and employees of, and all positions in or under an institution named in section 3(b) shall be subject to inclusion in a demonstration project under this Act. Prior to the design phase of the demonstration project other work units on campus besides instruction had expressed dissatisfaction with the current personnel system. For the preceding reasons all employees at the institution will be included in the demonstration project. Information was added to clarify the makeup of the participants in the project and the division of the participants into an experimental and a control group for the purpose of evaluating the contribution based portion of the assessment process.

B. Hiring and Appointment Authorities, III.A

Comments. Three comments gave support to the HEWP plan to classify, examine and appoint employees on site rather than at the area BIA personnel office in Albuquerque.

An area of great concern was Indian Preference. Of the items contained in the letters which arrived after the closure of the comment period was the statement that Indian preference is compromised by the demonstration, and one other letter voiced this concern. One letter in support of HEWP noted the Indian Preference wording of III.A.1, which states that applicants who meet Indian Preference qualifications will receive preference in hiring. Also, the impact of the Scholastic Achievement Appointment on Indian preference received two negative comments. One further question regarding Indian Preference concerned ranking procedures for Indian preference if more than one applicant meets Indian Preference.

Two comments opposed the optional extension of the probation period from one to three years, because of a concern that this would place undue stress on employees. One stated that one year of probation, not three, was sufficient time to evaluate an employee.

Two comments supported contingent appointments, and one other comment expressed the concern that contingent appointments would replace permanent employees.

One comment suggested language that would delineate the Haskell Board of Regents, role in the hiring and review of the Haskell President. It based its authority on Public Law 105–337 and a resolution passed by the National Haskell board of Regents Jan. 13, 2000 (2000–03). The recommended language included giving the Regents authority for (1) determining the process for applications for President; (2) rating and ranking Presidential applicants and (3) recommending the most qualified candidate(s) to the Director of OIEP. It suggested that the Regents conduct an annual review of the President to be used to help determine appropriate personnel actions based on performance or conduct. The comment further suggested that the Regents expand their

authority after long-range development planning, self-study, and training.

Commenters also showed concern for hiring procedures. One requested clarification of academic procedures in reference to hiring of Academic positions and questioned whether non-academic administrators should follow the same procedures. One comment stated that the term insufficient number is not clarified in reference to highest certifiable grouping of candidates (III.A.1.a).

Response. HEWP proceeds with the hiring and appointment authorities of the demonstration project, which improves personnel administration of employees. The demonstration project corrects personnel problems by providing on-site personnel classification, examination, rating, and appointment authorities.

The revised document clarifies and strengthens wording of Indian preference hiring procedures, which is supported by the Public Law 105–337 limitation:

> No demonstration project under this Act may provide for a waiver of Indian preference. (4.C.i).

The Indian Preference rating section now reads:

> If one or more qualified applicants demonstrate Indian preference eligibility, then only those applicants will be considered for the position. Those Indian Preference candidates who meet the minimum qualifications will be further evaluated based on Knowledge, Skills, and Abilities that are directly linked to the position(s) to be filled and receive numerical scores of 70, 80, or 90.
>
> If no Indian Preference applicants meet the minimum qualifications, then other candidates will be considered. Those non-Indian Preference candidates who meet the minimum qualifications will be further evaluated based on Knowledge, Skills, and Abilities that are directly linked to the position(s) to be filled and receive numerical scores of 70, 80, or 90.

The Scholastic Achievement Appointment in the **Federal Register** is revised to allow this appointment only for candidates who qualify for Indian Preference.

Policies for probation and contingent appointments remain as they are in the **Federal Register**. The flexible probation period allows for employees to finish advanced degrees or licensing required for upper-level position. This encourages an educated, well qualified workforce. In the case of faculty, the probation period is a compromise with the seven years required for tenure at most colleges. Contingent appointments are not meant to replace permanent employees. The **Federal Register** states:

> The contingent appointment may not be used to replace or substitute for work performed by employees occupying regular positions required to perform the mission of the institution, but may be used to supplement regular positions work activities (III.A.2).

The intent of HEWP is to provide contingent appointments for general staffing needs and academic appointments equivalent to the positions of teaching assistant and instructor. Contingent appointments are subject to time limits so that contingent employees can transition to permanent positions. The use of part-time instructors can become exploitive, with such employees given limited salaries, no benefits, and no permanent status. HEWP allows for the flexibility of temporary and emergency additions to the workforce, but with the provision that ongoing employment leads to institutional commitment.

HEWP does not address the relationship between the Board of Regents and OIEP. The demonstration is a personnel system within the federal government, and legal liability for the system rests with the federal government. The HEWP Operations Manual and the memorandum of understanding between OIEP and the Board of Regents will expand on the Regents, role outside of this document.

HEWP clarified the term academic procedures in III.A.1.a. The **Federal Register** is revised to clarify the number of highest certifiable groupings of job candidates:

> If according to the judgment of hiring personnel the 'superior' group does not create a large enough pool of eligible applicants for ranking, then applicants in the next lower group may be certified.

C. Broadbanding, III.B.

Comments. One comment suggested employees' change in broadband levels should be noncompetitive. Other comments showed a need for clarification of the **Federal Register**: one comment misinterpreted broadbanding as a means to lower base salary; another comment said the terms Professional and Technical/Specialist as broadband categories were unclear; another comment requested clarification for GS and WG equivalent levels, as well as executive ranges. Finally, the Simplified Assignment Process (III.B.2) was considered a preliminary step toward downsizing:

> [Simplified Assignment Process] implies HINU is downsizing, shrinking instead of growing.

Response. Advances within broadband levels are noncompetitive, and advances from one broadband area to another can be noncompetitive. This provides for rewarding high-performing employees who contribute to the institution's mission. This also encourages continuity by moving employees through broadbands without necessitating a change to a supervisory positions. Broadbanding does not change base pay or the locality adjustment. Step increases for satisfactory or higher performance, and incentive increases as a result of assessment scores can be added to base pay. Base pay is not subject to reduction except under adverse actions. The three broadband categories are changed to Academic, Technical/Specialist and Support. HEWP revised graphics and terms to clarify broadband salary levels and increases. The Simplified Assignment Process section opens with a general statement that emphasizes the flexible assignment process of broadbanding rather than as a method of initiating downsizing at HINU.

D. Classifications, III.C.

Comment. Employees are entitled to an appeals process for classification of positions and a timeline.

Response. The section Classification Appeals (III.C.6) addresses appeals and limits, including the time period for case processing under Title V (5 CFR 511.605).

E. Contribution-based Compensation Assessment System, III.D.

Comment. Four comments supported CCAS as a tool to improve employee quality. Individual comments about CCAS questioned procedural details. These included clarity of the graphic illustration (with the suggestion that it should be inverted so up showed high-achieving employees); privacy of ranking procedures; and second-level supervision of the pay pool for the Administrative Council and the President. Two comments questioned the learning contract process, with one concerned that employees would be required to pursue degrees and/or training to keep a job. One commenter was unfamiliar with the term 360 degree feedback used in the assessment process. Another comment on 360 degree feedback expressed concern that surveys used to provide customer feedback would be too time consuming and further requested information on the specific means to obtain peer evaluation.

Response. The demonstration implements CCAS on the starting date but with amendments based on comments. Details of the procedures are clarified, including the graphic illustration of CCAS. Privacy in

personnel matters continues to be a priority of the managers, supervisors, and HINU personnel office for CCAS according to federal guidelines. As the supervising manager of HINU, the President has final authority over the Administrative Council and in turn is assessed by the OIEP director. The learning contracts, which are written agreements between supervisors and employees, encourage employees to receive training to remain current with their appropriate employment fields. The institution also expects employees to learn appropriate behaviors in the workplace. HINU has required, for example, all-campus training in harassment issues as well as computer literacy. Training is part of the ongoing personnel process. Such training enhances the skills of employees, resulting in qualified, high-performing employees. HEWP added wording to clarify the term learning contract, and the Operations Manual will specify procedures. HEWP added language to III.D.3 to clarify the term 360 degree feedback, as an assessment system that includes input from several sources. HEWP does not believe that surveys would be unmanageable. At present, customers provide information via surveys for teacher evaluation, computer services, library services evaluation, and procurement and warehouse evaluation. Other areas of the institution use surveys to collect data, but they are not coordinated into one assessment process, which would be the advantage of the demonstration project. Procedures for peer evaluation, as well as customer and manager evaluations, will be developed for each area of the institution and explained in the Operations Manual.

F. General Comments

A range of general comments questioned overall procedures of the demonstration project, including the following:

(1) Fairness

Comments. Two comments suggested supervisors can use the broadbanding system to unfairly move employees to undesirable work assignments and enable managers to insert the phrase ''other duties as assigned'' into job descriptions. Because such broadband changes may not be adverse actions, no appeal process is in place. Two comments expressed concern that the supervisors would conduct the employee assessment unfairly and politicize the process. One respondent was uncertain who would conduct the assessments, and if that person would be appropriate. One comment suggested the importance of equitable administration of sabbatical awards, and another comment noted the importance of managerial training for fairness of the demonstration.

Response. The demonstration establishes a structured, group review process to assess employees' contributions to the mission, including broadband work assignments, assessments, and sabbatical awards. This process is designed to reduce favoritism and promote fairness. The advantage of flexible movement among assignments and levels enhances the ability of the institution to meet needs that change quickly as new academic programs evolve and as budget appropriations change on an annual basis. Employees with exceptional skills can be recruited and moved through pay levels more quickly. Sabbaticals are evaluated on criteria that evaluate overall contribution to the mission. Balances are in place to ensure supervisors give employees fair work assignments, assessments, and rewards. The demonstration project provides a balance to supervisory assessment scores and ranking through use of pay pool panels. These provide for review of supervisors' ratings by their peers (*i.e.,* by other raters in the same pay pool) and by the supervisor of all raters in that pool. In addition, rated employees are rank-ordered by the entire pay pool panel. The intent here is not so much to require ranking per se as to ensure that inflation or deflation by any rater will be identified and corrected via the normal operation of the panel process. Finally, the pay pool manager (who is at a higher organizational level than all the above-mentioned supervisors) oversees and approves the results of the group review process.

A focused training session will teach supervisors and managers how to administer CCAS correctly. HEWP concurs that formal and informal training is essential for every employee in the project. Additionally, a third-party evaluator continually collects data on project operation and monitors compensation trends, among other areas.

Broadbanding does not imply employees will be assigned outside their fields of expertise. The **Federal Register** states:

> a technical expert can be assigned to any project, task, or function requiring similar technical expertise. A manager might be asked to manage any similar function or institution consistent with that individual's qualifications (III.B.2).

An employee may appeal an undesirable assignment under the current negotiated agreement with the union. The negotiated union agreement also provides appeals procedures for assessment scores. The current evaluating supervisor, familiar with the work environment, will conduct the assessment.

In summary, the pay pool panel process, managerial training, continuing evaluation, and union appeals all guard against favoritism and promote fairness for employees under the demonstration.

(2) Composition of the Steering Committee and Team

Comments. Two commenters raised concerns regarding the individuals who developed the demonstration project. They noted the need for expertise in the fields of labor law, federal personnel systems, and academic personnel systems. Adequate Indian representation on the development team and committee was questioned by one comment.

Response. HEWP team members represented labor law concerns throughout the development of the project documents. Also, steering committee members are familiar with labor law in their roles as respondents to union negotiations. The negotiated agreement in effect during the initial design portion of the project was with NFFE. After the initial publication of the proposed project IEF was certified as the bargaining unit for HINU. Currently, IEF does not have a negotiated agreement with the university. However, the administration of the university is committed to working with IEF to ensure the success of the university. The federal personnel specialist at Haskell has worked with the team from the time of her appointment in July, 1999. An Office of Personnel Management personnel officer familiar with demonstrations projects spent details totaling more than seven months at Haskell. She worked with the team and steering committee to develop a lawful, effective personnel system. Those who worked on HEWP also had academic experience in personnel practices, including University of Utah, Arizona State University, Cornell University, and Montana State University. Team members researched personnel practices at numerous colleges and universities, including St. Mary's College, Baker University, University of Kansas, Ohio State University, Simon Fraser University, George Mason University, Georgia Institute of Technology, Portland State University, University of Delaware, University of Minnesota, University of Wisconsin, and others. Most of the team and committee

members who developed the program are Indian. The steering committee and director of Office of Indian Education Programs have final authority over the project. All of these individuals are Indian. The team used volunteer members with expertise who contributed to the overall effort. Two-thirds of the SIPI-Haskell team were Indian. When Haskell separated from SIPI, two non-Indians remained with the team out of four active members, and three resource people. Four out of six members of the sub-committee developing descriptors for the operations manual are Indian.

(3) Academic Freedom

Comment. One comment suggested HEWP suppresses academic freedom because it derives from a military model. Another comment also expressed concern over academic freedom.

Response. As a federal institution, Haskell remains under federal law regarding conflict of interest and the Hatch Act. HEWP makes no change from Title V in classroom or other areas of academic freedom. In *Academic Ethics* (III.E.2) it clarifies employee responsibilities and rights regarding an academic environment outside the restrictions of usual government employment. Ideas and concepts were drawn from other demonstration projects, Air Force and Army, however, the employees in these projects were civil service employees as is the case with HINU.

(4) Availability of **Federal Register** Document for Employee Input.

Comments. One comment in support of HEWP described the numerous training sessions made available to employees. Two adverse comments noted the working draft of the **Federal Register** was unavailable to employees, while one comment said the **Federal Register** language was overly bureaucratic.

Response. In December, 1999, the HEWP team announced availability of the draft at the library and on the campus electronic bulletin board. The team provided training sessions during regular meeting times, including meetings with Faculty Senate, Facilities, Athletics, Managers, Food Services, and Student Services. They created an e-mail address for response to comments and suggestions. Because the **Federal Register** is a legalistic document, and provides evidence that is acceptable to a court of law (prima facie evidence), language must be accurate and specific. Team members followed models, recommendations, and requirements in the National Archives and Records Administration publication ''The **Federal Register:** What It Is and How To Use It'' (rev. 1992).

(5) Budget

Comments. Concerns arose over adequate budget to support the changes of HEWP, including monies to support professional training and technological upgrades.

Response. The steering committee and team members made OIEP aware of the need for budget increases. Salary adjustments are based on the possibility of level funding. Clarification of the professional training provisions (III.G) includes encouragement for outside grants monies. To address upgrades of information systems on campus, outside consultants evaluated the available technology and estimated costs to implement and support the demonstration project. The revisions to HEWP made as a result of comments simplify the information technology needs.

(6) Definitions

Comment. One commenter asked for the addition of explanatory definitions to the document. The commenter noted Retained Rate Employee in III.D.5 is a confusing term. The commenter also questioned the meaning of positive education requirements in the Scholastic Achievement Appointment section (III.A.1.b). Another comment noted Merit Principles are not defined in III.D.a, the section, Delegation of Examining Authority.

Response. The definition and rights of an employee who retains a salary after a Reduction-In-Force under 5 U.S.C. 5363 and 5 CFR part 536 are delineated in these federal documents, which are cited in III.D.5. The term positive education requirements refers to positions with a directly related or professional level college curriculum. Federal Merit Principles are the widespread ethical and legal standards that guide all federal institutions' personnel systems (5 U.S.C. 2301–2305). Technical demonstration project terms were defined within the text of the document. The operations manual will include a glossary of technical personnel vocabulary.

(7) Waivers

Comment. The waiver to Chapter 71 of Title V, USC was considered unnecessary since all employees are under the demonstration project.

Response. The waiver enforces the unilateral application of the project to all union and non-union employees, as determined in the authorizing law, Public Law 105–337.

Dated: June 23, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

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I. Executive Summary

The project was designed by an Alternative Personnel System (APS) Team, under the authority of the Interim President of HINU and the Office of Indian Education Programs, Bureau of Indian Affairs. There are three major areas of change: (a) Institution-controlled rapid hiring; (b) a contribution-based compensation system; (c) and a simplified assignment process. The project will cover all employees at HINU as described under section II. E. The Department of Interior will perform extensive evaluation of the project.

II. Introduction

A. Purpose

The purpose of the project is to demonstrate that greater managerial control over personnel processes and functions at the worksite can enhance the effectiveness of a higher education workforce and, at the same time, expand

the opportunities available to employees through a more responsive personnel system. This demonstration project will provide managers at the lowest practical level the authority, control, and the flexibility they need to provide quality educational opportunities for American Indian students. This project not only provides a system that recognizes, rewards, and retains employees for their contribution, but it also supports their personal and professional growth.

B. Problems With the Present System

Haskell Indian Nations University, a Federal higher education institution, provides post-secondary education to Native American students from across the United States. To do this effectively and efficiently, the institution must employ top-quality faculty, administrators, support staff, and technical/specialist workforce. The current personnel system must be re-engineered to provide incentives and rewards to employees who exhibit characteristics of educational mastery, enthusiasm, and innovation, and who increase their contribution to the higher education mission accordingly. Hiring restrictions and overly complex job classifications unduly exhaust valuable resources (staff, time, and budget), and unnecessarily detract attention from the institution's educational mission. Managers must be able to compete with the private and public education sector for the best talent and be able to make timely and competitive job offers to potential employees. Those same managers need the tools to reward employees for continuing excellence so that the higher education system reflects a quality workforce. The current personnel system does not provide an environment that motivates employees to continue to increase their contribution to the institution and its mission. A contribution-based compensation system will help managers acquire motivational tools and provide a forum in which to apply them. The higher education process is continually changing and depends on shared expertise of a highly educated faculty and staff; therefore, managers can implement most effective strategies through local control of positions and their classification. Managers need the ability to move employees freely within their institution to meet the educational mission and to provide developmental opportunities for employees. Managers at present have only limited tools to shape the workforce to ensure continued growth of new ideas, strategies, and state-of-the-art skills for the 21st century.

The inflexibility of many of today's personnel processes and the diffused authority, accountability, and approval chains throughout the system result in a workforce that cannot posture itself for a rapidly changing technological and academic environment. This demonstration is designed: (1) To provide an encouraging environment that promotes the growth of all employees; and (2) to improve the local higher education manager's ability and authority to manage the workforce effectively.

C. Changes Required/Expected Benefits

This project will demonstrate that a human resources' system tailored to the mission and needs of a higher education institution will result in: (a) Increased quality in the higher education workforce and the educational outcomes produced; (b) increased timeliness of key personnel processes, especially hiring; (c) increased retention rates of ''excellent contributor'' and separation rates of ''poor contributors''; (d) increased satisfaction of institutional customers with the higher education process and its outcome; and (e) increased satisfaction with the personnel management system by customers/ students, employees and tribal communities.

The Higher Education Workforce Project (HEWP) builds on the features of demonstration projects at the Department of Defense Acquisition, Air Force Research Laboratory, Department of the Navy (China Lake), and National Institute of Standards and Technology (NIST). The long-standing Department of the Navy (China Lake) and NIST demonstration projects have produced impressive statistics on job satisfaction for their employees versus that for the Federal workforce in general. Therefore, in addition to the expected benefits mentioned above, it is anticipated that the HEWP will result in more satisfied employees as a consequence of the proposed demonstration project's hiring procedures, classification accuracy, pay equity, and fairness of performance management. A full range of measures will be collected during project evaluation.

D. Participating Institutions

The Higher Education Workforce Project (HEWP) will cover Haskell Indian Nations University, an institution of higher education of the Department of the Interior, Bureau of Indian Affairs. HINU is located in Lawrence, Kansas.

E. Participating Employees

In determining the scope of the demonstration project, primary consideration was given to the number and diversity of occupations within the Higher Education Workforce Project, which includes professional employees and supporting personnel. The project provides for adequate development and testing of the Contribution-based Compensation and Assessment System (CCAS). The intent of this project is to provide the institution with increased control and accountability for the covered workforce. Therefore, the decision was made to include all General Schedule (GS) and Wage Grade System (WG) positions in the demonstration project. All positions and series in effect on October 1, 2000 will be included in the demonstation project. Employees will be divided into two groups, an Experimental and a Control group. Employees covered under the Performance Management and Recognition System Termination Act (pay plan code GM) are General Schedule employees and are covered under the demonstration project.

F. Bargaining Units

Of the approximately 200 HINU employees, all except managerial employees formerly were under union representation by the National Federation of Federal Employees union and were covered by a negotiated national agreement. At the time of final publication the Indian Educators Federation (IEF) union had been certified as the bargaining unit representative for OIEP. The NFFE agreement will continue to be recognized as the applicable agreement until such time as a new agreement is reached in accordance with the specific requirements under Public Law 105–337. Any collective bargaining agreement in effect on the day before this demonstration project commences shall continue to be recognized by HINU until such date of a new negotiated agreement, as may be determined by mutual agreement of the parties.

G. Project Design

In 1996, after several years of planning and research, HINU submitted legislation to Congress for developing a different higher education personnel system. In 1997 SIPI submitted legislation to Congress proposing an alternative personnel system. In 1998, the two pieces of legislation were joined due to the similarity of the two higher education schools' missions and identification of similar problems with acquiring personnel. Public Law 105–

337, Oct. 31, 1998, authorized each institution to carry out a demonstration project for developing a higher education alternative personnel system. A joint Steering Committee was established in September 1999 as the governing body for the project. Members on the Steering Committee represented both institutions and the Office of Indian Education Programs, BIA. An Alternative Personnel System Team was established in October 1999, made up of employees from SIPI and HINU to design and develop the demonstration project that would test a new personnel system for use at SIPI and HINU. The APS team presented recommendations for a new system to the Steering Committee in December 1999 for approval. BIA, OIEP subsequently determined that the two institutions could separate individual alternative personnel systems and the Steering Committee was disbanded. HINU continued to use its APS team to design this project. The APS team developed an alternative personnel system that represents sweeping changes in the entire spectrum of human resources management for HINU. Several of the initiatives are designed to assist the institution in hiring the best people to fulfill mission requirements. Others focus on developing, motivating, and equitably compensating employees based on their contribution to the mission. Initiatives to effectively manage workforce turnover and maintain institutional excellence were also developed.

Public Law 105–337 authorizes HINU to test alternative benefits systems. Though no changes have been made to the existing benefits systems in this publication, HINU reserves the right to test alternative benefits systems in the future in accordance with the provisions of Public Law 105–337.

III. Personnel System Changes

A. Hiring and Appointment Authorities

1. Simplified, Accelerated Hiring

The complexity of the current system and various hiring restrictions create delays; hamper management's ability to hire, develop, realign, and retain a quality workforce that is reflective of the institution's mission statement; and inhibit a quick response to the technological, economic and educational needs of tribal communities. Line managers, departmental and divisional managers find the complexity limiting as they attempt to accomplish timely recruitment of needed personnel with appropriate knowledge and skills. To compete with the private sector and institutions of higher learning for the best talent available and be able to make expeditious job offers, managers need a process that is streamlined and easy to administer. In order to create a human resources management system that facilitates meeting HINU's mission and institutional excellence, this demonstration project will respond to today's dynamic environment by obtaining, developing, motivating, and retaining high-performing employees. The project will provide a flexible system that can restructure or renew the workforce quickly to meet diverse mission needs, respond to workload needs, and contribute to quality educational infrastructure.

Specifically, this part of the demonstration project will provide simplified, accelerated hiring of quality personnel by providing HINU full authority to appoint individuals to positions. Appropriate recruitment methods and resources will include those that are likely to yield quality candidates with the knowledge, skills, and abilities necessary to perform the duties of the position.

(a) Delegated Examining Authority. This demonstration project establishes a streamlined applicant examining process. This process will be used to fill all positions at HINU. Basic eligibility factors will be determined, using any and all available resources, linking applicants' knowledge, skills, and abilities to those required in each position. Minimum eligibility requirements will be those at the lowest equivalent grade of the appropriate broadband level. Selective placement factors may be established when judged to be critical to successful job performance. These factors will be determined by the HINU selecting officials and communicated to applicants for minimum eligibility. All candidates will be evaluated to determine if they meet minimum qualifications. If one or more qualified applicants demonstrate Indian preference eligibility, then only those applicants will be considered for the position. Those Indian Preference candidates who meet the minimum qualifications will be further evaluated based on Knowledge, Skills, and Abilities that are directly linked to the position(s) to be filled and receive numerical scores of 70, 80, or 90.

If no Indian Preference applicants meet the minimum qualifications, then other candidates will be considered. Those non-Indian Preference candidates who meet the minimum qualifications will be further evaluated based on Knowledge, Skills, and Abilities that are directly linked to the position(s) to be filled and receive numerical scores of 70, 80, or 90.

Veterans' preference eligibles meeting basic (minimum) qualifications will receive an additional five or ten points (depending on their preference eligibility) added to the minimum scores identified above. Applicants will be placed in one of the following quality groups based on their numerical score including any preference points: Basically Qualified (score of 70 to 79); Highly Qualified (score of 80 to 89); or Superior (score of 90 and above). The names of veterans' preference eligibles will be entered ahead of others having the same numerical score.

For scientific and professional positions at the basic rate of pay equivalent to GS–9 and above, names of all qualified applicants will be referred by quality groups in the order of the numerical ratings, including any veterans' preference points. For all other positions, (*i.e.,* other than professional positions at the equivalent of GS–9 and above), veterans' preference eligibles with a compensable service-connected disability of ten percent or more who meet basic (minimum) eligibility will be listed at the top of the highest group certified.

For GS–9 and above academic and academic administrative positions, the institution may convene committees to review the applications on the certification list. In accordance with academic procedures—which could include review of credentials and interviews—these committees will recommend a ranked preference list to the hiring officials. Non-academic supervisors may choose to use committees in the hiring process for GS–9 level positions and above.

All applicants in the highest group will be certified. If according to the judgement of the selecting official the Superior group does not create a large enough pool of eligible applicants for ranking, then applicants in the next lower group may then be certified; should this process not yield a sufficient number, groups will be certified sequentially until a selection is made or the qualified pool is exhausted. When two or more groups are certified, applicants will be identified by quality group (i.e., Superior, Highly Qualified, Basically Qualified) in the order of their numerical scores. Indian preference eligibles will be placed at the top of the Superior group. Passing over any veterans' preference eligible(s) to select a non-preference non-Indian eligible requires approval under current pass-over or objection procedures.

The on-site Personnel Director will serve as a consultant during the hiring

process, overseeing Indian and veterans' preference, timely processing of paperwork, and other procedures that ensure lawful and equitable procedures for all applicants. The hiring process will reflect the federal Merit Principles.

(b) Scholastic Achievement Appointment. This demonstration project establishes a Scholastic Achievement Appointment that provides the authority to appoint candidates with degrees to positions with positive education requirements. This appointment applies only to Indian Preference candidates. Candidates may be appointed under this procedure if (1) They meet the minimum standards for the positions as published in OPM's Operating Manual ''Qualification Standards for General Schedule Positions,'' or university classification standards, (2) they meet the selective factors stated in the vacancy announcement, (3) the occupation has a positive education requirement, (4) the candidate has a cumulative grade point average (GPA) of 3.5 or better (on a 4.0 scale) in those courses in those fields of study that are specified in the Qualification Standards for the occupational series and an overall undergraduate GPA of at least 3.0 on a 4.0 scale, and (5) the appointment is into a position at a pay level lower than the top step of GS–7. Appointments may also be made at the equivalent of GS–9 through GS–11 on the basis of graduate education and experience, but with the requirement of a GPA of at least 3.7 on a scale of 4.0 for graduate courses in the field of study required for the occupation.

(c) Eminent Scholars Appointment. This demonstration project establishes an Eminent Scholar Appointment that provides the authority to appoint Indian Preference candidates with expertise relevant to the mission of the institution. Candidates appointed under this authority may have specialized skills and/or knowledge in fields not conventionally acquired through academic degree programs. Qualifications include a demonstrated record of achievement and recognition as a foremost expert in the appointee's area of expertise. Academic degrees may be considered. The President has hiring authority over this appointment.

2. Permanent, Contingent and Temporary Appointment Authorities

The educational work environment is seriously affected by variable workload and mission changes that require flexibility not only in workforce numbers but required skills and knowledge. The current personnel system is unable to adapt the workforce rapidly to these changes. This demonstration project provides a method to adjust the workforce as needed. Under this demonstration project there are three appointment options: permanent, contingent and temporary appointments. The permanent appointment replaces the existing career and career-conditional appointments. The contingent appointment is a new appointment authority that is based roughly on the existing term appointment to provide flexible hiring practices for HINU. The contingent appointment is for limited positions not to exceed four years, with an option for one additional year when the need for an employee's service is not permanent. All employees under the permanent and contingent appointments will be eligible for benefits under the guidelines of the demonstration project, provided the appointment is the duration of at least one year. Benefits are the same as those currently afforded permanent employees. An academic year is considered equivalent to a calendar year for academic appointments.

The institution may make a temporary appointment for a period that is expected to last less than one year. Reasons for making a contingent or temporary appointment include, but are not limited to, carrying out special project work; staffing new or existing programs of limited duration; filling a position in activities undergoing review for reduction or closure; and replacing permanent employees who have been temporarily assigned to another position, are on extended leave, or have entered military service. Selections for temporary appointments for less than one year will be non-competitive. Selections for contingent appointments may be made under non-competitive or competitive examining processes. Employees hired under a one-year or more, contingent appointment authority are not permanent, but may be eligible for conversion to permanent appointment. To be converted, the employee must (1) have been selected for a contingent position under competitive procedures, with the announcement specifically stating that the individual(s) selected for the contingent position(s) may be eligible for conversion to permanent appointment at a later date; (2) must have participated in each cycle of the contribution-based assessment process during their appointment; and (3) be selected under merit promotion procedures for the permanent position. Service under a contingent appointment immediately prior to a permanent appointment may be applied toward the probationary period at the discretion of the manager, provided contribution is adequate and the permanent position is in the same career path as the contingent appointment. The institution may place a contingent employee in any other contingent position, provided the employee meets the qualifying requirements of that position. However, such reassignment will not serve to extend the appointment beyond the original contingent appointment time period. Academic and Technical/Specialist conversions will require review by appropriate peers. Permanent, contingent and temporary appointments may be used for part-time and full-time purposes. The contingent and temporary appointments may not be used to replace or substitute for work performed by employees occupying regular positions required to perform the mission of the institution, but may be used to supplement regular positions work activities. Any position filled using a temporary appointment for two consecutive years must be reviewed by the Personnel Director for more appropriate designation as a permanent or contingent appointment position.

3. Modified Probationary Period

For employees in the Academic and Technical/Specialist career paths, the current one-year probationary period does not always provide managers the time needed to properly assess the contribution and conduct of new hires in the higher education environment. New hires may be involved in extended training, degree completion and/or educational assignments away from their normal institution. A means of extending the opportunity for management to review and evaluate the contribution and potential of new hires is needed. Expansion of the current one-year probationary period affords management better control over the quality of employees required to meet mission needs and provide sufficient opportunity to evaluate contribution during the beginning of a career. Permanent employees will fulfill a maximum of three years probation that may be decreased to not less than one year. All newly hired employees may be subject to an extension of their probationary period equal to the length of any educational/training assignment that places the employee outside normal supervisory review. The modified probationary period applies to new hires or those who do not have reemployment or reinstatement eligibility. Aside from extending the probationary period, all other features of the current probationary period are

retained. Probationary employees will be terminated when they fail to demonstrate proper conduct, technical competency, and/or adequate contribution for continued employment. When a supervisor decides to terminate an employee serving a probationary period because his/her work contribution or conduct during that period fails to demonstrate fitness or qualifications for continued employment, the supervisor shall terminate the employee=s services by written notification thirty days prior to the effective date of the action. Probationary employees will receive all the benefits of the non-probationary permanent employees, with the exception that they may be separated without due cause. After fulfilling the probationary requirements, an employee will not be separated without full substantive and procedural rights.

4. Voluntary Emeritus Program

Under the demonstration project, the President of HINU has the authority to offer retired or separated individuals voluntary assignments in the institution and to accept the gratuitous services of those individuals. Voluntary Emeritus Program assignments are not considered employment by the Federal Government (except as indicated below). Thus, such assignments do not affect an employee=s entitlement to buy-outs or severance payments based on earlier separation from Federal Service. This program may not be used to replace or substitute for work performed by employees occupying regular positions required to perform the mission of the institution.

The Voluntary Emeritus Program will ensure continued quality higher education by allowing retired employees to retain a presence in the HINU education community. Experienced workers will be available to enrich the institution=s educational mission through mentorships and other service.

To be accepted into the Voluntary Emeritus Program, a volunteer must be recommended to the President by one or more HINU education managers. Not everyone who applies is entitled to an emeritus position. The President must document the decision process for each applicant (whether accepted or rejected) and retain the documentation throughout the assignment. Documentation of rejections will be maintained for two years.

To ensure success and encourage participation, the volunteer's Federal retirement pay (whether military or civilian) will not be affected while the volunteer is serving in emeritus status. Retired or separated Federal employees may accept an emeritus position without a ''break in service'' or mandatory waiting period.

Voluntary Emeritus Program volunteers will not be permitted to monitor contracts on behalf of the Government but may participate on any contract if no conflict of interest exists. The volunteer may be required to submit a financial disclosure form annually and will not be permitted to participate on any contracts where a conflict of interest exists.

An agreement will be established by the volunteer, the President, and the Personnel/Human Resources Office. The agreement must be finalized before the assumption of duties and shall include:

(a) a statement that the service provided is gratuitous, does not constitute an appointment in the Civil Service, is without compensation or other benefits except as provided for in the agreement itself, and that, except as provided in the agreement regarding work-related injury compensation, any and all claims against the Government because of the service are waived by the volunteer;

(b) a statement that the volunteer will be considered a Federal employee for the purposes of:

(i) Subchapter I of Chapter 81 of Title 5, U.S.C. (using the formula established in 10 U.S.C. 1588 for determination of compensation) (work-related injury compensation);

(ii) Chapter 171 of title 28, U.S.C. (tort claims procedure);

(iii) Section 552a of Title 5, U.S.C. (records maintained on individuals); and

(iv) Chapter 11 of title 18, U.S.C. (conflicts of interest).

(c) the volunteer's work schedule;

(d) length of agreement (defined by length of project or time defined by weeks, months, or years);

(e) support provided by the activity (travel, administrative, office space, supplies, etc.);

(f) a one-page statement of duties and experience; a statement specifying that no additional time will be added to a volunteer=s service credit for such purposes as retirement, severance pay, and leave as a result of being a member of the Voluntary Emeritus Program; a provision allowing either party to void the agreement with ten days= written notice and;

(g) the level of security access required.

B. Broadbanding

1. Broadband Levels

A broadband system will replace the current General Schedule (GS) and Wage Grade structure. Currently, the 15 grades of the General Schedule are used to classify positions and, therefore, to set pay. The General Schedule covers all white-collar work—administrative, technical, clerical, and professional. The Wage Grade System covers all blue-collar work—trade, craft, and labor.

Occupations with similar characteristics will be grouped together into three career paths with broadband levels designed to facilitate pay progression and to allow for more competitive recruitment of quality candidates at differing rates. Academic, Technical/Specialist, and Support designate career paths as depicted in TABLE I. Competitive promotions will be less frequent, and movement through the broadband levels will be a more seamless process than under current procedures. Like the broadband systems used at the Department of the Navy (China Lake) and the National Institute of Standards and Technology (NIST) permanent demonstration projects, advancement within the system is contingent on merit.

TABLE I.—BROADBAND CAREER PATHS

Academic:			
I	II	III	IV
(GS 4–6)	(GS 7–9)	GS (10–12)	GS (13–15)
Technical or Specialist:			
I	II	III	IV
(GS 4–6)	(GS 7–9)	GS (10–12)	GS (13–15)
Support:			
I	II	III	
(GS 4–6)	(GS 7–9)	GS (10–12)	

There will be four broadband levels in the demonstration project, labeled I, II, III, and IV. Levels I through IV will include the current grades of GS–01 through GS–15. These are the grades in which the workforce employees are currently found. Wage grade compensation levels were converted to GS grade, then the GS grade was used in setting the broadband levels. The position of President of HINU will be paid minimally at the GS 15, step 1 pay rate and will be limited by a maximum pay rate equivalent to Executive Schedule Level III.

Generally, employees will be converted into the broadband level that includes their permanent GS and WG grades of record. Each employee is assured an initial place in the system without loss of pay. As the rates of the General Schedule and/or Executive Schedule are increased, the minimum and maximum rates of the broadband levels and the salary range of the President willalso increase. Individual employees receive pay increases based on their assessments under the Contribution-based Compensation and Assessment System (CCAS). General pay increases will be given to all employees regardless of assessment scores. Within-Grade Increases will occur as scheduled under the General Schedule, subject to attainment of a full performance assessment score. Currently no special salary rates are in effect at HINU. However, if a position is created that falls under a special salary rate, that rate will be converted to a broadband level comparable to the special salary rate and that special salary rate will no longer be applicable to the demonstration project employee. Employees will receive the locality pay of their geographical area.

All applicants for employment with, all eligibles for employment with and all newly hired employees will be hired under the HEWP demonstration program procedures, and will be subject to the HEWP demonstration program. All newly hired personnel entering the system will be employed at a level consistent with the expected basic qualifications for the broadband and level, as determined by rating against qualification standards. Salaries of individual candidates will be based on academic qualifications and/or work experience. The hiring official will determine the starting salary based upon available labor market considerations relative to special qualifications requirements, scarcity of qualified applicants, programmatic urgency, and education/experience of the new candidates. In addition to the flexibility available under the Broadbanding system, the authorities for retention, recruitment, and relocation payments granted under the Federal Employees Pay Comparability Act of 1990 (FEPCA) can also be used.

The use of broadbanding provides a stronger link between pay and contribution to the mission of the institutions. It is simpler, less time consuming, and less costly to maintain. In addition, such a system is more easily understood by managers and employees, is easily delegated to managers, coincides with recognized career paths, and complements the other personnel management aspects of the demonstration project.

Academic work requires knowledge in a field of science or learning characteristically acquired through education or training equivalent to a bachelor's or higher degree with major study in or pertinent to the specialized field, as distinguished from general education. The Academic provides or performs the primary mission of the institution. Technical/Specialist work involves extensive practical knowledge, gained through experience and/or specific training or requires knowledge pertinent to the occupation typically acquired by a college degree, certification or licensing. Work in these occupations may involve substantial elements of the work of the Academic field, but requires less than full knowledge of the field. Technical/Specialist work is associated with and supportive of the mission. Support Services occupations involve structured work in support of office or facility. The work facilitates the program/mission.

2. Simplified Assignment Process

Today's environment of downsizing and workforce transition mandates that the institution have maximum flexibility to assign individuals. Broadbanding enables the institution to have the maximum flexibility to assign an employee within broad descriptions, consistent with the needs of the institution and the individual's qualifications. Assignments may be accomplished as realignments and do not constitute a position change. For instance, a technical expert can be assigned to any project, task, or function requiring similar technical expertise. Likewise, a manager could be assigned to manage any similar function or institutional component consistent with that individual's qualifications. This flexibility allows broader latitude in assignments and further streamlines the administrative process and system.

C. Classification

1. Occupational Series

The present General Schedule classification system has 434 occupational series that are divided into 22 occupational groups. The present Federal Wage classification system has similar groupings. The HEWP currently covers numerous series in the 22 occupational groups and Federal Wage System. These occupational series and groups will be maintained throughout the demonstration project.

2. Classification Standards

The present system of OPM classification standards will be used for identification of proper series and occupational titles of positions within the demonstration project. The CCAS broadband factors and their level descriptors, as aligned in the three career paths, will be used for the purpose of broadband and level determination. Under the demonstration project, each broadband level will be represented by a set of descriptors.

3. Classification Authority

Under the HEWP, the President will have delegated classification authority and may re-delegate this authority to subordinate management levels. Re-delegated classification approval must be exercised at least one management level above the first-line supervisor of the position under review, except in the case of those employees reporting directly to the President. First-line supervisors will provide classification recommendations. The Personnel Director will provide on-going consultation and guidance to managers and supervisors throughout the classification process.

4. Statement of Duties and Requirements

Under the demonstration project's classification system, a new Statement of Duties and Requirements (SDR) will replace the current position description. The SDR will combine the position information, staffing requirements, and contribution expectations into a single document. The new SDR will include a description of job-specific information, reference the CCAS broadband level descriptors for the assigned broadband level, and provide other information pertinent to the job. An automated computer assisted process to produce the SDR may be used. The objectives in developing the new SDR are to: (a) Simplify the descriptions and the preparation process through automation; (b) provide more flexibility in work assignments; and provide a more useful tool for other functions of personnel management, *e.g.,* recruitment, assessment of contribution, employee development, and reduction in force.

5. Fair Labor Standards Act

Fair Labor Standards Act (FLSA) exemption or non-exemption determinations will be made consistent with criteria found in 5 CFR (Code of Federal Regulations) part 551.

All employees are covered by the FLSA unless they meet criteria for exemption. Positions will be evaluated as needed by comparing the duties and responsibilities assigned the broadband level descriptors for each broadband level, and the 5 CFR part 551 FLSA criteria.

6. Classification Appeals

An employee may appeal the occupational series, title, or broadband level of his/her own position at any time. An employee must formally raise the areas of concern to supervisors in the immediate chain of command in writing. If an employee is not satisfied with the supervisory response, he or she may then appeal to the Haskell Classification Appeals Panel. Time periods for case processing under 5 CFR 511.605 apply.

An employee may not appeal the accuracy of the SDR document, the demonstration project classification criteria, or the pay-setting criteria; the propriety of a salary schedule; or matters grievable under an administrative or negotiated grievance procedure or an alternative dispute resolution procedure.

The evaluation of classification appeals under this demonstration project is based upon the demonstration project classification criteria. Case files will be forwarded for adjudication through the personnel/human resources office and will include copies of appropriate demonstration project criteria.

D. Contribution-based Compensation and Assessment System

1. Overview

The purpose of the Contribution-based Compensation and Assessment System (CCAS) is to provide an equitable and flexible method for assessing and compensating the higher education workforce. CCAS allows for more employee involvement in the performance assessment process, increases communication between supervisors and employees, promotes a clear accountability of contribution by each employee, facilitates employee progression tied to institutional contribution, and provides an understandable basis for salary changes.

CCAS goes beyond a performance-based rating system. It measures the employee's contribution to the mission and goals of the institution, rather than how well the employee performed a job as defined by a performance plan. Past experience with the existing performance appraisal system indicates that performance plans are often tailored to the individual's level of previous performance. Hence, an employee may have been rewarded by salary step increases for accomplishing a satisfactory level of performance against a diminishing set of responsibilities. CCAS promotes salary adjustment decisions made on the basis of an employee's overall annual contribution when compared to all other employees and level of compensation. Therefore, larger-than-average salary increases are possible for employees who are determined to be under-compensated, and smaller-than-average increases are permitted for employees who are deemed to be over-compensated in relationship to their institutional contributions.

An employee's performance is a synthesis of contributions that determines the Employee Assessment Score (EAS). Contribution is measured by using a set of six factors, each of which is relevant to the success of the educational institution. The descriptors for each factor will have four levels. Criteria for achieving these levels will be determined by each organizational unit, such as an academic department, within the school. Taken together, these factors capture the critical content of jobs in each career path. The factors may not be modified or supplemented. These factors are the same as those used to classify a position at the appropriate broadband level.

The compensation system is an important indicator of what an organization believes is important to its success. A well designed compensation system provides a battery of tools to support organizational goals and outcomes. The design should be strategic, flexible, and customer-focused. The current compensation system, because it was implemented in a piecemeal fashion for a hierarchical organization, does not relate to educational needs and is cumbersome. The demonstration project will test a compensation system that is able to change based on the needs of the entire organization, of the taxpayer, and of the student being served.

Employees in all four broadband levels will have the same factors, with applications relevant to the SDR. The six factors are: (1) Primary Duty and Requirements; (2) Customer/Student Service; (3) Department and Institutional Service; (4) Teamwork/Supervision; (5) Professional Development Activity; (6) Communications/Research and Publications. These factors were chosen for assessing the yearly contribution of HINU employees in the three career paths (1) Academic, (2) Technical/Specialist, and (3) Support. Each factor has multiple levels of increasing contribution corresponding to the

broadband levels within the relevant career paths. These levels will be delineated in the operations manual.

Factor 1

Primary Duty and Requirements refers to the activities that relate to the position description title, such as Carpenter, relating to levels of achievement of carpenter duties; or Instructor, relating to achievement of levels related to classroom instruction. The individual factor will relate to the activity described by the title.

Factor 2

Customer/Student Service pertains to activities that relate to direct and indirect contact with customers/students. Work is timely, efficient and of acceptable quality. Personal and organizational interactions enhance customer relations and actively promote rapport with customers. Flexibility, adaptability, and decisiveness are exercised appropriately.

Factor 3

Departmental and Institutional Service refers to institutional programs and department plans that contribute to the employee's organizational unit and the institution as a whole to reflect the vision, mission and goals.

Factor 4

Teamwork/Supervision refers to non-managerial employees (Teamwork) or managers (Supervision and Teamwork). Teamwork is a factor that describes any worker's contribution to the mission and goals of the organizational unit, through interactions with other employees and departments, including supervision of employees. Management of resources is also part of this factor.

Factor 5

Professional Development Activity refers to any training, academic course work, instructional conferences, or activity that contributes to the employee's ability to perform duties for the benefit of the institution of higher learning.

Factor 6

Communications/Research and Publications refers to ability to communicate—both written and oral—in a clear, concise, and appropriate manner. Research and Publication refers to researching relevant sources for curriculum and instructional topic area purposes, and in some cases publishing the results of research.

2. CCAS Pay Ranges

The Contribution-based Compensation and Assessment System (CCAS) pay schedule is the same as the General Schedule and provides a direct link between increasing levels of contribution and increasing salary. This is shown by the graph in Figure 1. The horizontal axis of Figure 1 represents the salary range of the General Schedule from GS–4, Step 1, which is $19,000 (Calendar Year 2000) through GS–15, Step 10, which is $100, 897 (CY00). Each employee's CCAS Pay Range is the pay range for their GS grade. Locality salary adjustments are not included in the CCAS pay ranges, but are incorporated into the demonstration participant's pay.

The vertical axis in Figure 1 represents the scale for assessment scores in 0.1 increments within each broadband level. This scale is directly related to the CCAS pay range for GS grades, the broadband levels, and the factor descriptor levels.

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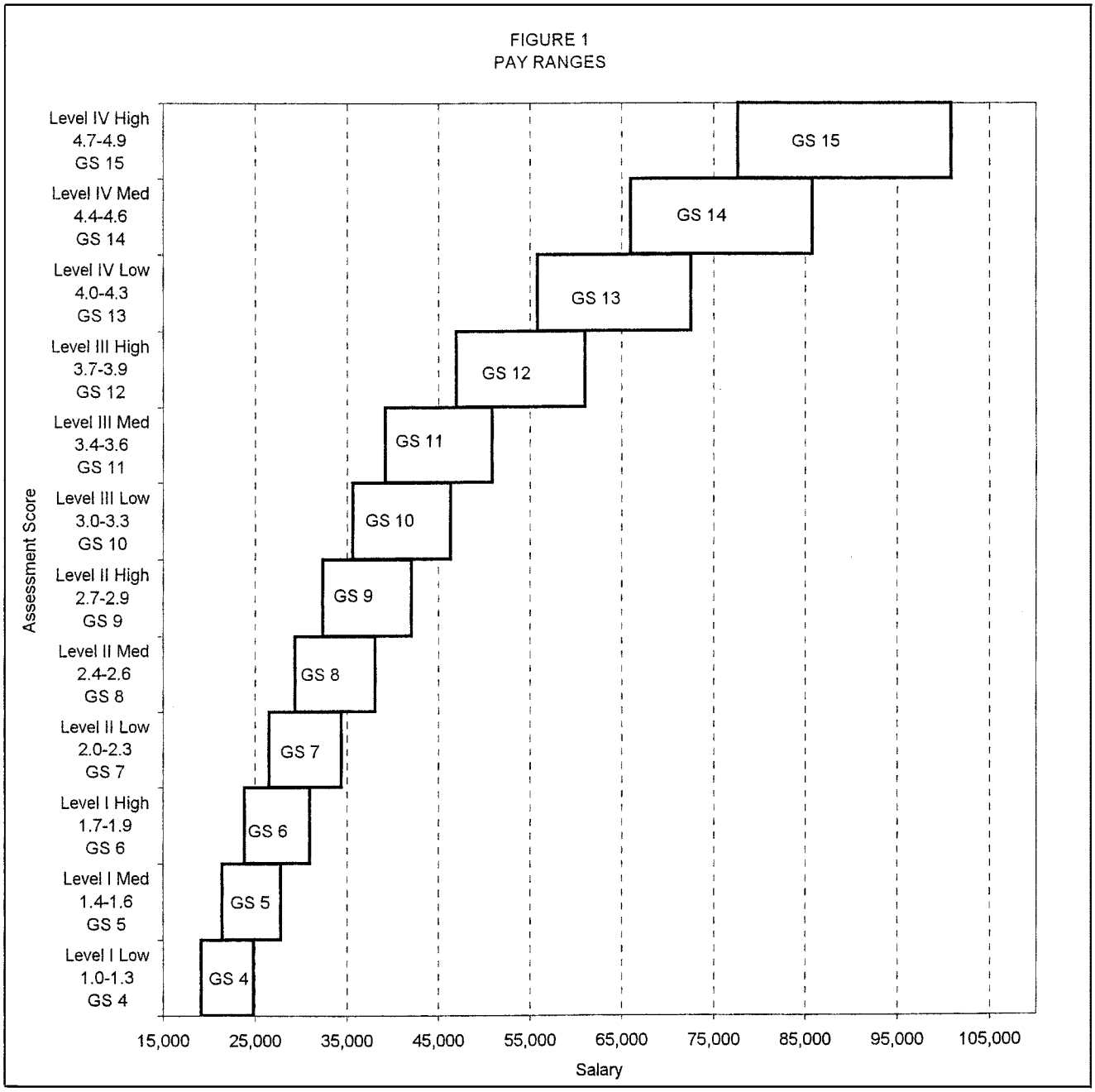

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With the exception of the President's pay rate, these CCAS pay ranges encompass all salaries (excluding locality pay) paid under this demonstration, from GS–4, step 1, through GS–15, Step 10, for CY2000. The salary range for the President's position is from GS–15 to Executive Schedule Level III. The President's salary is the only salary that may increase beyond GS–15, Step 10.

Each year the CCAS pay ranges are adjusted upward based on the general pay increase under 5 U.S.C. 5303. All employees will receive the general pay increase under 5 U.S.C. 5303 each year. Within-Grade Increases (WGI's) will occur as scheduled under the General Schedule system, provided the employee earns an assessment score equivalent to or higher than the Expected Contribution Score (ECS) for their grade and level. The pay schedule and the CCAS pay ranges are the same for all three career paths, with the exception that the Support Broadband has three levels rather than four levels. The minimum and maximum numerical assessment scores and associated base salaries for each broadband level, by career path, are provided in TABLE II (see 3. CCAS Assessment Process). These minimum and maximum break points represent the lowest and highest General Schedule salary rates for the grades banded together and, therefore, the minimum and maximum salaries possible for each broadband level.

Employees whose annual assessment scores plotted against their base salary fall within their current pay range are considered appropriately compensated. Employees whose scores plotted against their salaries fall to the left or above their respective pay ranges are considered under-compensated. Employees whose scores plotted against their salaries fall to the right or below

of their respective pay ranges are considered over-compensated. The goal of CCAS is to make pay consistent with employees' contributions to the HINU mission.

Employees will enter the demonstration project without a loss of pay (see Section V, Conversion) and without an Employee Assessment Score (EAS). The first assessment score will result from the first annual CCAS assessment process. Until the first CCAS assessment process is completed, no employee is considered to be appropriately, over-or under-compensated. Employees may determine their Expected Contribution Score (ECS) by locating the intersection of their salary and GS Grade with the highest assessment score in each interval for that grade and pay range. The highest numerical value in each interval is the ECS. Future CCAS assessments may alter an employee's position relative to this graph.

3. CCAS Assessment Process

The annual CCAS assessment cycle begins on July 1 and ends on June 30 of the following year, with the exception of the first year of the demonstration project, which will begin at the project's inception on October 1, 2000, and end June 30, 2001. At the beginning of the annual assessment cycle, the broadband level descriptors will be provided to employees so that they know the basis on which their contribution will be assessed for their pay pool. (A pay pool is a group of employees among whom the CCAS dollars are calculated and distributed. The President of the institution determines the pay pool structure (see Section III D 4)). At that time, employees will be advised that all factors are critical. Key terms will be defined or clarified. Supervisor and employee discussion of specific work assignments, standards, objectives, and the employee's contributions within the CCAS framework should be conducted on an ongoing basis.

Near the end of the annual (July 1 to June 30) assessment cycle, the immediate supervisor (assessing official) meets with employees, requesting them to summarize their contributions for each factor in a self-assessment. From an employee's inputs and his/her own knowledge from all available sources, the assessment official identifies for each employee the earned level and interval (low, medium or high) for each factor.

The assessment officials within each pay pool (including second-level supervisors) meet together to ensure consistency and equity of the contribution assessments.

To determine the EAS, numerical values are assigned to each factor, using the intervals shown in TABLE II. TABLE II shows each of the three broadbands divided into levels, along with the corresponding GS grades, and the scale for contribution scores. The highest numerical score in each interval is the ECS for the Low, Medium, and High intervals of the level. If the contribution for a factor is at the lowest possible score of Level I, an assessment score of 1.0 is assigned. Higher levels of contribution correspond to numerical scores in 0.1 increments up to 4.9. A factor score of 0.0 can be assigned if the employee's contribution does not demonstrate a minimum Level I contribution. Likewise, a factor score of 5.9 can be assigned if the employee's contribution exceeds the maximum Level IV contribution. The EAS is calculated by averaging the numerical values assigned for each of the six factors.

TABLE II.—ASSESSMENT SCORE INTERVALS WITHIN BROADBAND LEVELS

[Academic]

I			II			III			IV		
Low	Med.	High	Low	Med.	High	Low	Med.	High	Low	Med.	High
1.0–1.3	1.4–1.6	1.7–1.9	2.0–2.3	2.4–2.6	2.7–2.9	3.0–3.3	3.4–3.6	3.7–3.9	4.0–4.3	4.4–4.6	4.7–4.9
(GS 4–6)			(GS 7–9)			(GS 10–12)			(GS 13–15)		

[Technical or Specialist]

I			II			III			IV		
Low	Med.	High	Low	Med.	High	Low	Med.	High	Low	Med.	High
1.0–1.3	1.4–1.6	1.7–1.9	2.0–2.3	2.4–2.6	2.7–2.9	3.0–3.3	3.4–3.6	3.7–3.9	4.0–4.3	4.4–4.6	4.7–4.9
(GS 4–6)			(GS 7–9)			(GS 10–12)			(GS 13–15)		

[Support]

I			II			III		
Low	Med.	High	Low	Med.	High	Low	Med.	High
1.0–1.3	1.4–1.6	1.7–1.9	2.0–2.3	2.4–2.6	2.7–2.9	3.0–3.3	3.4–3.6	3.7–3.9
(GS 4–6)			(GS 7–9)			(GS 10–12)		

The assessing officials (including second-level supervisors) meet again, correcting any inconsistencies and making the appropriate adjustments in the factor assessments. Then an Overall Contribution Score (OCS) is calculated for each employee and employees are placed in rank order:

O.C.S.=(Expected Contribution Score (ECS)/Employee Assessment Score (EAS))x100_____%

The pay pool panel (pay pool manager and the assessing officials in the pay pool who report directly to him/her) meets to conduct a final review of the OCS and recommends compensation adjustments for pay pool members. The

pay pool panel has the authority to make OCS adjustments, after discussion with the initial assessing officials, to ensure equity and consistency in the ranking of all employees. Final approval of OCS rests with the pay pool manager. The OCS approved by the pay pool manager becomes the final OCS. Assessment officials will communicate the factor scores and OCS to each employee and discuss the results by July 15.

If on June 30, the employee has served under CCAS for less than six months, the assessment official will wait for the subsequent annual cycle to assess the employee. The first CCAS assessment must be rendered within 18 months after entering the demonstration project.

When an employee cannot be evaluated readily by the normal CCAS assessment process due to special circumstances that take the individual away from normal duties or duty station (e.g., long-term full-time training, active military duty, extended sick leave, leave without pay, union activities, etc.), the assessment official will document the special circumstances on the assessment form. The assessment official will then determine which of the following options to use:

(a) Re-certify the employee's last OCS; or

(b) Presume the employee is contributing consistently with his/her pay level and will be given minimally the full general increase and any within-grade increase that may be due.

Pay adjustments will be made on the basis of the OCS or substitute determination and the employee's rate of basic pay. Pay adjustments are subject to payout rules discussed in section III. D. 4. Final pay determinations will be made by the pay pool manager. OCS scores can only be adjusted after discussion with the assessment official.

Pay adjustments will be documented by SF–50, Notification of Personnel Action. For historical evaluation and analytical purposes, dates on the effective date of OCS assessments, actual assessment scores, the actual salary increases, amounts contributed to the pay pool, and applicable bonus amounts and/or awards will be maintained for each demonstration project employee.

4. 360-degree Feedback and Learning Contracts

HINU will establish a performance feedback system using a 360-degree feedback process. The system will use 360-degree feedback, or input from several sources, including: (a) an employee's manager, (b) peers, and (c) customers. Performance feedback will provide all employees with information on their contribution to the organization's performance. It will also help them identify their training and developmental needs for the yearly cycle by pinpointing areas of strength and items needing improvement.

The results of the 360-degree performance feedback will go only to the employee, with group or area results being summarized for the manager. In areas with a single employee, the results will be provided to the manager. If an employee appeals his/her rating, the employee may use 360-degree supporting information in the appeal of the original assessment. Training in the use of the performance feedback system will be provided to all employees.

This information contributes to Learning Contracts, which are written agreements between supervisors and employees identifying manangement or employee skill blocks. Skill blocks are skills or abilities that allow a manager or employee to succeed and excel at their job. Every employee will have a Learning Contract that will consider needs identified by employee development measures, the performance feedback system, and a degree/certification/recertification system.

This is especially important in the development of managers. One item identified in ''A Study of Management and Adminitstration: The Bureau of Indian Affairs'' by the National Academy of Public Administration, is the need for a management development program. One of the primary management objectives recommended by NAPA was management development. To accomplish this objective requires a committment to provide the planning and resources necessary to support this training and development. The creation of a management learning contracts with the associated knowledge and skill blocks for manageers will support this objective.

5. Pay Pools

The pay pool structure and allocated funds are under the authority of the President. The following minimal guidelines will apply to pay pool determinations: (a) a pay pool(s) is based on the institution's organizational structure and should include a range of salaries and contribution levels; (b) a pay pool must be large enough to include a second level of supervision, since the CCAS process uses a group of supervisors in the pay pool to determine OCS and recommended salary adjustments; and (c) neither the pay pool manager nor the supervisors within a pay pool will recommend or set their own individual pay levels.

The amount of money available in the pay pool fund is determined by the President. An Incentive amount (I), made up of money that would have been available for quality step increases, within-grade increase amounts not awarded because of inadequate contribution, promotions between grades encompassed in the same broadband level, and other appropriate incentive factors. The amount of ''I'' will be determined each year by the President and will be at a minimum of 1 percent based on a percentage of the base pay salaries of all employees as of September 30. The amount of ''I'' may be adjusted as necessary each year to maintain cost discipline. Though not all funds within a pay pool must be distributed each year as pay or bonuses, a pool of funds are to be set aside for pay purposes and may not be used for other purposes before annual pay calculations are made. Justification for altering the amount of money in the pay pool fund must be made to the President, who has final authority. The President, if provided sufficient justification, has the authority to alter the amount of money in the pay pool fund.

6. Salary Adjustment Guidelines

After the initial conversion into the CCAS, employees' yearly contributions will be determined by the CCAS process described above, and their OCS versus their current rate of base pay will be plotted on a graph. Refer back to Figure 1. The position of those points relative to the CCAS pay ranges (GS grade) gives a measure of the employee's compensation (salary) versus contribution (Employee Assessment Score). Employees fall into one of three categories: over-compensated—to the right or below the pay range; appropriately compensated—within the pay range; or under-compensated—to the left or above the pay range. Depending on the category into which an employee falls on the graph, he/she may be eligible for three forms of additional compensation (all employees will receive the annual general pay increase regardless of contribution score): (1) Within-Grade Increases (WGI's) will occur as scheduled under the General Schedule system provided the employee earns an assessment score equivalent to or higher than the ECS for their grade and broadband level. Failure to obtain an adequate assessment score will result in the denial of the WGI. If the employee is in a two-year or a three-year waiting cycle for the receipt of a WGI, and does not obtain an adequate

assessment in one of the annual assessment cycles, an average assessment score for the WGI waiting period must be calculated to determine eligibility for receipt of the WGI when it occurs. The average assessment score would be calculated by adding all annual assessment scores that have occurred and dividing by the number of years (two or three) of the waiting period. Subsequent decisions on receipt of WGI's when in a one, two, or three year waiting period will be based on an average of the last two or three assessment scores as applicable; (2) The pay pool panel has the options of giving an employee a base salary increase and/or a contribution bonus (a lump-sum payment that does not affect base salary). An employee on retained pay in the demonstration project will receive pay adjustments in accordance with 5 U.S.C. 5363 and 5 CFR part 536; (3) The pay pool panel has the option of giving an employee an incentive award (a lump sum payment that does not affect base pay).

An employee receiving a retained rate may be eligible for a base pay increase, since such increases are limited by the maximum salary rate for the employee's broadband level.

An employee identified as appropriately compensated may receive a contribution base pay increase provided the increase does not exceed the maximum salary for the employee's current broadband level pay range. An employee identified as over-compensated will receive no additional contribution base pay increase, no contribution bonus and no incentive award. An employee identified as under-compensated would be eligible for a base pay increase. The contribution base pay increase may not exceed the maximum salary for the current level.

Employees who are appropriately compensated and under-compensated are eligible for contribution bonuses up to $10,000 with the approval of the pay pool manager. Contribution bonus amounts exceeding $10,000 require the President's approval.

Employees whose OCS would result in a base pay increase such that the salary exceeds the maximum salary for their current broadband level will receive a contribution bonus equaling the difference. This bonus will be paid as a lump sum payment and will not add to base pay.

In general, those employees who fall in the under-compensated category should expect to receive greater salary increases than those in the over-compensated category. Over time, all employees in the over- and under-compensated categories will migrate closer to the appropriate CCAS pay ranges and receive a salary appropriate for their level of contribution.

Each pay pool manager will set the necessary guidelines for pay adjustments in the pay pool. Decisions will be consistent within the pay pool, reflect cost discipline over the life of the demonstration project, and be subject to administrative review. The maximum available base pay rate under this demonstration project will be the rate for a Executive Schedule Level III.

7. Incentive Awards Budget

The President will establish an Incentive Awards Budget (IAB) for the institution each year. The IAB will be set at not less than 1 percent of the institution's total salary budget calculated on September 30 of each year. For the first year of the project, the total IAB will be set at a minimum of 1.0 percent of total salaries. The IAB is separate from the funds available for base pay increases and contribution bonuses. The IAB includes funds formerly spent for performance awards and incentive awards. The IAB will be available for use as incentive awards for employee contributions and all other incentive awards (*i.e.* Special Act or Service). The President may adjust the annual budget proportions of performance awards and incentive awards in the IAB. This will allow adequate funds for incentive awards not related to CCAS contributions. IAB funds will be paid as lump sum amounts and will not add to base pay. The IAB funds will be under the Pay Pool Manager for each pay pool. The Pay Pool Manager will give final approval for all Incentive Awards.

8. Movement Between Broadband Levels

It is the intent of the demonstration project to have career growth accomplished through the broadband levels. Movement within a broadband level will be determined by contribution and salary increases following the CCAS process. Movement to a higher broadband level is a competitive action. Movement to a lower broadband level may be voluntary or involuntary.

Broadband levels derive from salaries of the banded GS grades and equivalent Wage Grades. The lowest salary of any given broadband level is that for step 1 of the lowest GS grade in that broadband level. Likewise, the highest salary of any given broadband level is that for step 10 of the highest GS grade in that broadband level. There is a natural overlap in salaries in the GS grades that also occurs in the broadband system. Since the OCS is directly related to salaries, there is also an overlap between OCS across broadband levels.

Under the demonstration project, managers are provided greater flexibility in assigning duties by moving employees among positions within their broadband level. If there are vacancies at higher levels, employees may be considered for promotion to those positions in accordance with competitive selection procedures.

Under competitive selection procedures, the selecting official(s) may consider candidates from any source based on job-related, merit-based methodology. Similarly, if there is sufficient cause, an employee may be demoted to a lower broadband level position according to the contribution reduction-in-pay or removal procedures discussed in section III E 2.

9. Implementation Schedule

The 2000 employee annual appraisal will be done according to the performance plan rules in effect at the time of the 2000 close-out. Employees will be moved by personnel action into the demonstration project and into the appropriate broadband level on October 1, 2000, or as specified in the institution's implementation plan. The first CCAS assessment cycle will run from October 1, 2000 to July 30, 2001. Overall assessment scores and pay adjustments resulting from the 2001 assessment cycle will be paid out the first full pay period of January 2002.

10. CCAS Grievance Procedures

Bargaining unit employees who are covered under a collective bargaining agreement may grieve CCAS pay determinations under the grievance-arbitration provisions of the agreement. Other employees not included in a bargaining unit may utilize the appropriate administrative grievance procedures to raise a grievance against CCAS pay decisions (5 CFR Part 771), with supplemental instructions as described below.

An employee may grieve the assessment scores. If an employee is covered by a negotiated grievance procedure that includes grievances over assessment or appraisal scores, then the employee must use that procedure. If an employee is not in a bargaining unit, or is in a bargaining unit but grievances over appraisal or assessment scores are not covered under a negotiated grievance procedure, then the employee may use the administrative grievance procedure (5 CFR Part 771) with supplemental actions described below.

The employee will submit the grievance initially to the first line supervisor, the assessment official, who

will submit a recommendation to the pay pool panel. The pay pool panel may accept the assessment official's recommendation or reach an independent decision. In the event that the pay pool panel's decision is different from the assessment official's recommendation, appropriate justification will be provided. The pay pool panel's decision is final unless the employee requests reconsideration by the next higher official to the pay pool manager. The pay-pool manager will render the final decision on the grievance.

11. Contribution-based Reduction-in-Pay or Removal Actions

CCAS is an assessment system that goes beyond a performance-based rating system. Contribution is measured against the CCAS factors for the three career paths, each having multiple levels of increasing contribution. (For the purposes of this section, these factors are considered critical and are synonymous with critical elements as referenced in 5 U.S.C. Chapter 43.) This section applies to reduction-in-pay or removal of demonstration project employees based solely on inadequate contribution. Inadequate contribution in any one factor at any time during the assessment period is considered grounds for initiation of reduction-in-pay or removal action. The following procedures replace those established in 5 U.S.C. 4303 pertaining to reductions in grade or removal for unacceptable performance, except with respect to appeals of such actions. The statutory authority for appeals of contribution-based actions appears in 5 U.S.C. 4303(e). As is currently the situation for performance-based actions taken under 5 U.S.C. 4303, contribution-based actions shall be sustained if the decision is supported by substantial evidence and the Merit Systems Protection Board shall not have mitigation authority with respect to such actions. The separate statutory authority to take contribution-based actions under 5 U.S.C. 75, as modified in the waiver section of this notice (section IX), remains unchanged by these procedures.

When an employee's contribution in any factor is at or less than the mid-point of the next lower broadband level (or a factor score of zero for broadband level I employees), the employee is considered to be contributing inadequately. In this case, the supervisor must inform the employee, in writing, that unless the contribution increases to a score above the midpoint of this next lower broadband level (thereby meeting the standards for adequate contribution) and is sustained at this level, the employee may be reduced in pay or removed. For broadband level I employees, a factor score that increases to the midpoint and is sustained at that level is determined to be adequate.

The written notice that informs an employee that he/she may be reduced in pay or removed affords the employee a reasonable opportunity (a minimum of 60 days) to demonstrate acceptable contribution with regard to identifiable factors. As part of the employee's opportunity to demonstrate adequate contribution, he or she will be placed on a Contribution Improvement Plan (CIP). The CIP will state how the employee's contribution is inadequate, what improvements are required, recommendations on how to achieve adequate contribution, assistance that the agency shall offer to the employee in improving inadequate contribution, and consequences of failure to improve.

Additionally, when an employee's contribution plots in the area to the right or below the upper rail of the normal pay range, the employee is considered to be contributing inadequately. In this case, the supervisor has two options. The first is to take no action but to document this decision in a memorandum for the record. A copy of this memorandum will be provided to the employee and to higher levels of management. The second option is to inform the employee, in writing, that unless the contribution increases to, and is sustained at, a higher level, the employee may be reduced in pay or removed.

These provisions also apply to an employee whose contribution deteriorates during the year. In such instances, the group of supervisors who meet during the CCAS assessment process may reconvene any time during the year to review the circumstances warranting the recommendation to take further action on the employee.

Once an employee has been afforded a reasonable opportunity to demonstrate adequate contribution but fails to do so, a reduction-in-pay (which may include a change to a lower broadband level and/or reassignment) or removal action may be proposed. If the employee's contribution increases to an acceptable level and is again determined to deteriorate in any factor within two years from the beginning of the opportunity period, actions may be initiated to effect reduction in pay or removal with no additional opportunity to improve. If an employee has contributed acceptably for two years from the beginning of an opportunity period, and the employee's overall contribution once again declines to an inadequate level, the employee will be afforded an additional opportunity to demonstrate adequate contribution before it is determined whether or not to propose a reduction in pay or removal.

An employee proposed for a reduction-in-pay or removal is entitled to a 30-day advance notice of the proposed action that identifies specific instances of the employee's inadequate contribution upon which the action is based. The employee will be afforded a reasonable time to answer the notice of proposed action.

A decision to reduce in pay or remove an employee for inadequate contribution may be based only on those instances of inadequate contribution that occurred during the two-year period ending on the date of issuance of the proposed action. The employee will be issued written notice at or before the time the action will be effective. Such notice will specify the instances of inadequate contribution on which the action is based and will inform the employee of any applicable appeal or grievance rights.

All relevant documentation concerning a reduction-in-pay or removal that is based on inadequate contribution will be preserved and made available for review by the affected employee or a designated representative. At a minimum, the records will consist of a copy of the notice of proposed action; the written answer of the employee or a summary; and the written notice of decision and the reasons thereof, along with any supporting material including documentation regarding the opportunity afforded the employee to demonstrate adequate contribution.

E. Special Situations Related to Pay

1. Change in Assignment

The CCAS concept, using the broadbanding structure, provides flexibility in making changes in assignments. In many cases an employee can be reassigned, without change in their rate of basic pay, within broad descriptions, consistent with the needs of the institution and commensurate with the individual's qualifications. Subsequent institutional assignments to projects, tasks, or functions requiring the same level and area of expertise and the same qualifications would not constitute an assignment outside the scope or coverage of the current level descriptors. In most cases, such assignments would be within the factor descriptors and could be accomplished without the

need to process a personnel action. Assignment resulting in series change, broadband level change, or change to KSAs shall be accomplished by official personnel action. Thus, this approach allows for broader latitude in institutional assignments and streamlines the administrative process. Rules for specific types of assignments under CCAS follow:

(a) Promotions. When an employee is promoted to a higher broadband level, the salary upon promotion will be at least 6 percent, typically not more than 20 percent, greater than the employee's current salary. However, if the minimum rate of the new broadband level is more than 20 percent greater than the employee's current salary, then the minimum rate of the new broadband level is the new salary. The employee's salary may not exceed the salary range of the new broadband level. When an employee receiving a retained rate is promoted to a higher broadband level, at a minimum the employee's salary upon promotion will be set in the higher broadband level at 6 percent higher than the maximum rate of the employee's existing broadband level; or at the employee's existing retained rate, whichever is greater.

(b) Competitive Selection for a Position with Higher Potential Salary. When an employee is competitively selected for a position with a higher target broadband level than previously held (*e.g.,* Upward Mobility), upon movement to the new position the employee will receive the salary corresponding to the minimum of the new broadband level or the existing salary, whichever is greater.

(c) Voluntary Change to Lower Broadband Level/Change in Career Path (except RIF). A provision exists today for an employee to request a change to lower grade. If that request is totally the employee's choice, then the employee's salary is lowered accordingly. To handle these special circumstances, employees must submit a request for voluntary pay reduction or pay raise declination during the 30-day period immediately following the annual payout and show reasons for the request. All actions will be appropriately documented. Although the rationale behind such a voluntary request varies under CCAS, a voluntary request for a pay reduction or a voluntary declination of a pay raise would effectively put an over-compensated employee's pay closer to or within the employee's contribution level. Since an objective of CCAS is to properly compensate employees for their contribution, the granting of such requests is consistent with this goal. Under normal circumstances, all employees should be encouraged to advance their careers through increasing contribution rather than trying to be under-compensated at a fixed level of contribution. When an employee accepts a voluntary change to lower broadband level or different career path, salary may be set at any point within the broadband level to which appointed, except that the new salary will not exceed the employee's current salary or the maximum salary of the assigned broadband level, whichever is lower.

(d) Involuntary Change to Lower Broadband Level Without Reduction in Pay Due to Contribution-based Action. Due to inadequate contribution, an employee's salary may fall below the minimum rate of basic pay for the broadband level to which he/she is assigned. When an employee is changed to a lower broadband level due to such a situation, this movement is not considered an adverse action.

(e) Involuntary Reduction in Pay, to Include Change to Lower Broadband Level and/or Change in Career Path Due to Adverse Action. An employee may receive a reduction-in-pay within his/her existing broadband level and career path; be changed to a lower broadband level; and/or be moved to a new position in a different career path due to an adverse action. In these situations, the employee's salary will be reduced by at least 6 percent, but will be set no lower than the minimum salary of the broadband level to which assigned. Employees placed into a lower broadband due to adverse action are not entitled to pay retention.

(f) Reduction-in-Force (RIF) Action (including employees who are offered and accept a vacancy at a lower broadband level or in a different career path). The employee is entitled to pay retention if all Title 5 conditions are met.

(g) Return to limited or light duty from a disability as a result of occupational injury to a position in a lower broadband level or to a career path with lower salary potential than held prior to the injury. The employee is entitled indefinitely to the salary held prior to the injury and will receive full general and locality pay increases.

2. Academic Ethics

According to the Ethics Reform Act of 1989, Federal employees may not accept outside salaries, stipends, and/or honoraria directly related to work duties. This prevents conflict of interest for employees who would use information acquired through federal employment to seek outside gain. However, normal academic activities fall outside the restrictions of usual government employment. The 1991 Ethics Manual for federal employees clarifies acceptable guidelines for outside employment:

> The Committee has determined that the following types of compensation are not honoraria: Compensation for activities where speaking, appearing, or writing is only an incidental part of the work for which payment is made (*e.g.,* conducting research) * * *.
>
> Haskell employees may engage in outside employment or activities that relate to their official duties and responsibilities and accept outside salaries, stipends, and/or honoraria.
>
> Employees must inform their supervisor prior to engaging in such activities.

F. Revised Reduction-In-Force (RIF) Procedures

RIF shall be conducted according to the provisions of 5 CFR part 351 and BIA procedures except as otherwise specified below.

Displacement means the movement via RIF procedures of an employee into a position held by an employee of lower retention standing.

Employees are entitled to additional years of retention service credit in RIF, based on assessment results. This credit will be based on the employee's three most recent annual overall contribution scores (OCSs) of record received during the four-year period prior to the issuance of RIF notices. However, if at the time RIF notices are issued, three CCAS cycles have not yet been completed, the annual performance rating of record under the previous performance management system will be substituted for one or more OCSs, as appropriate. An employee who has received at least one but fewer than three previous ratings of record shall receive credit for performance on the basis of the value of the actual rating(s) of record divided by the number of actual ratings received. Employees with three OCS or performance ratings shall receive credit for performance on the basis of the value of the actual ratings of record divided by three. In cases where an individual employee has no annual OCS or performance rating of record, an average OCS or performance rating will be assigned and used to determine the additional service credit for that individual. (This average rating is derived from the current ratings of record for the employees in that individual's career path and broadband level within the competitive area affected by a given RIF.)

When a competing employee is to be released from his/her position, the activity shall establish separate master retention lists for the competitive and excepted services, by type of work schedule and (for excepted service

master retention lists) appointing authority. Within the above groups, competing employees shall be listed on the master retention list in compliance with 5 CFR part 3551 and BIA procedures.

Employees will be ranked in order of their retention standing, beginning with the most senior employee. This employee may displace an employee of lower retention standing occupying a position that is at the same or lower broadband level and that is in a series for which the senior employee is fully qualified, to include a series in a different career path. The undue interruption standard of 5 CFR 351.403(a)(1) shall serve as the criterion to determine if an employee is fully qualified. In addition, to be fully qualified. (However, statutory waivers shall continue to apply) The displaced employee must be appointed under the same authority, if excepted service, and in the same work schedule. Offer of assignment shall be to the position that requires no reduction or the least possible reduction in broadband. Where more than one such position exists, the employee must be offered the position encumbered by the employee with the lowest retention standing.

Displacement rights are normally limited to 2 GS grades below the employee's present position. However, a preference-eligible employee with a compensable service-connected disability of 30 percent or more may displace up to 5 grades below the employee's present position level.

Employees covered by the demonstration are not eligible for grade retention. Pay retention will be granted to employees downgraded by reduction in force whose rate of basic pay exceeds the maximum salary range of the broadband level to which assigned. Such employees will be entitled to retain the rate of basic pay received immediately before the reduction for a period of one year or the completion of one assessment cycle whichever is longer. The employee will then receive the pay level or bonus equivalent to their CCAS rating. If the CCAS rating indicates a pay level lower than the current pay level then the CCAS level becomes the employees new pay level.

Under the demonstration project, all employees affected by a reduction-in-force action, other than a reassignment, maintain the right to appeal to the Merit Systems Protection Board (MSPB) if they believe the process/procedures were not properly applied.

Prior to RIF, employees may be offered a vacant position in the same broadband as the highest broadband available by displacement. Employees may also be offered placement into vacant positions for which management has waived the qualifications requirements. If the employee is not placed into a vacant position and cannot be made an offer of assignment via displacement, the employee shall be separated.

G. Academic and Certificate Training

Trained and educated personnel are a critical resource in a higher education institution. This demonstration recognizes that training and development programs are essential to improving the performance of individuals in the higher education workforce, and thereby raising the overall level of performance of the higher education workforce, and that a well-developed training program is a valuable tool for recruiting and retaining motivated employees. The HEWP authorizes degree and certificate training for HINU employees, and may contribute payment for these degree and certificate training programs. HINU will continue to seek funds from grants and internal budget to facilitate continuous acquisition of advanced, specialized knowledge essential to the higher education workforce, and provide a capability to assist in the recruiting and retaining of personnel critical to the present and future requirements of the higher education workforce.

H. Sabbaticals

The President of HINU will have the authority to grant sabbaticals without application to higher levels of authority. These sabbaticals will permit employees to engage in study, research, or work experience that contributes to their development and effectiveness. The sabbatical provides opportunities for employees to acquire knowledge and expertise that cannot be acquired in the normal working environment. These opportunities should result in enhanced employee contribution. The spectrum of available activities under this program is limited only by the constraint that the activity contribute to the institution's mission and to the employee's development. The program can be used for advanced education; employee development; or training with industry or on-the-job work experience with public, private, or nonprofit organizations. It enables an employee to spend time in an academic or work environment or to take advantage of the opportunity to devote full-time effort to technical, academic, or managerial research.

The HEWP sabbatical program will be available to all demonstration project employees who have seven or more years of service in the institution. Each sabbatical will be of three to twelve months' duration and must result in a product, service, report, or study that will benefit the higher education community as well as increase the employee's individual effectiveness. A process for application for a sabbatical will be established by the mechanism to recommend sabbaticals to the President, who has final approval authority, and who must ensure that the program benefits both the higher education workforce and the individual employee. Funding for the employee's salary and other expenses of the sabbatical is the responsibility of the institution.

IV. Training

The key to the success or failure of the proposed demonstration project will be the training provided for all involved. This training will provide not only the necessary knowledge and skills to carry out the proposed changes, but will also lead to participant commitment to the program.

Training prior to of implementation and throughout the demonstration will be provided to supervisors, employees, and the administrative staff responsible for assisting managers in effecting the changeover and operation of the new system.

The elements to be covered in the orientation portion of this training will include: (1) A description of the personnel system; (2) how employees are converted into and out of the system; (3) the pay adjustment and/or bonus process; (4) the new position requirements document; (5) the new classification system; and (6) the contribution-based compensation and assessment system.

A. Supervisors

The focus of this project on management-centered personnel administration, with increased supervisory and managerial personnel management authority and accountability, demands thorough training of supervisors and managers in the knowledge and skills that will prepare them for their new responsibilities. Training will include detailed information on the policies and procedures of the demonstration project, as well as skills training in using the classification system, position requirements document, and contribution assessment software developed for use in the project.

B. Administrative Services Staff

The Vice President for Administration, the Director of Personnel and the HEWP administrative

staff will play a key role in advising, training, and coaching supervisors and employees in implementing the demonstration project. This staff will receive training in the procedural and technical aspects of the project.

C. Employees

Prior to implementation, all employees covered under the demonstration project will be trained through various media. This training is intended to fully inform all affected employees of all significant project policies procedures, and processes.

V. Conversion

A. Conversion to the Demonstration Project

Initial entry into the demonstration project for covered employees will be accomplished through a full employee-protection approach that ensures each employee's initial placement into a broadband level without loss of pay. There will be no change or adjustment for General Schedule employees. They will remain at their current grade and step. Automatic conversion from the permanent Wage Grade into the new broadband system will be accomplished. Wage Board employees will be converted to a GS grade corresponding to the pay rate equal to or greater than their WG rate. They will then be placed into the new broadband system at that GS level.

Adverse action and pay retention provisions will not apply to the conversion process, as there will be no decrease in base pay rate. If the employee's rate of basic pay exceeds the maximum rate of basic pay for the broadband level corresponding to the employee's GS grade, the employee will remain at that broadband level and will receive a retained rate.

B. Conversion Back to the Former System

For demonstration project employees who were originally in the Wage Board System and are either moving to a Wage Grade (WG) position not under the demonstration project, or if the project ends and the employee must be converted back to their original Wage Grade system, the following procedure will be used to convert the employee's GS grade and step to the corresponding WG rate of pay. The position will convert to its original WG classification and grade. The employee will have their converted Wage Grade and WG rate of pay determined before movement or conversion out of the demonstration project and any accompanying geographic movement, promotion, or other simultaneous action. For conversions upon termination of the project and for lateral assignments, the employees pay will be equal to the original pay level upon entering the demonstration project. If they currently receive a rate of pay greater than their original rate they will be moved to the pay level nearest their demonstration project rate but not less than their current rate. If their current rate exceeds pay level five of their previous WG rate they will retain pay at the rate received in the demonstration project.

For GS schedule employees there will be no change from their project based pay since it is the GS system. Their current GS grade and rate will become the employee's actual GS grade and rate after leaving the demonstration project (before any other action). For transfers, promotions, and other actions, the current GS grade and rate will be used in applying any GS pay administration rules applicable in connection with the employee's movement out of the project (*e.g.*, promotion rules, highest previous rate rules, pay retention rules) as if the GS-converted grade and rate were actually in effect immediately before the employee left the demonstration project.

3. Employees Receiving a Retained Rate Under the Project

If an employee is receiving a retained rate under the demonstration project, the employee's GS-equivalent grade is the highest grade encompassed in his or her broadband level. The institution will confer with the Office of Personnel Management (OPM) to prescribe a procedure for determining WG-equivalent pay rates for employees receiving retained rates.

4. Years of Retention Service Credit and Contribution Provisions

Employees leaving the demonstration project will be assigned ratings of record that conform with pattern E of 5 CFR 430.208(d) based on the years of credit accumulated for the 3 most recent years during the last 4 years while under the demonstration project. Since the demonstration project does not make use of summary level designators (*e.g.*, Outstanding, Level 5. Highly Successful, Level 4; Fully Successful, Level 3; or Unacceptable, Level 1) used in the appraisal system and programs constructed under 5 U.S.C. Chapter 43 and 5 CFR part 430, the retention service credit that is based on the OCS. A score of 100%, Full Performance, or higher will convert to a satisfactory rating in the current Federal appraisal system for the purpose of retention service credit.

5. Within-Grade Increase—Equivalent Increase Determinations

Service under the demonstration project is creditable for within-grade increase purposes upon conversion back to the GS pay system. CCAS base salary increases (including a zero increase) under the demonstration project are equivalent increases for the purpose of determining the commencement of a within-grade increase waiting period under 5 CFR 531.405(b).

VI. Project Duration

The project evaluation plan addresses how each intervention will be comprehensively evaluated for at least the first five years of the demonstration project. Major changes and modifications to the interventions can be made through announcement in the **Federal Register**. At the five-year point, the entire demonstration project will be reexamined for: (a) Permanent implementation; (b) modification and additional testing; (c) extension of the evaluation period; or (d) termination.

VII. Evaluation Plan

Demonstration-authorizing legislation (Public Law 105–337) mandates evaluation of the demonstration project to assess the effects of project features and outcomes. The overall evaluation will consist of three phases—baseline, formative, and summary evaluations. The evaluation for the HEWP will be overseen by the Secretary, Department of the Interior, and Office of Indian Education Programs (OIEP). The main purpose of the evaluation is to determine the effectiveness of the personnel system changes to be undertaken. To the extent possible, strong direct or indirect relationships will be established between the demonstration project features, outcomes, and mission-related changes and personnel system effectiveness criteria. The evaluation approach uses an intervention impact model that specifies each personnel system change as an intervention, the expected effects of each intervention, the corresponding measures, and the data sources for obtaining the measures.

During the development of the Higher Education Workforce Project an observation was made that while previous demonstrations had used similar employee assessments, there appeared to be no study to show that the results achieved in the projects derived from the link between assessment and compensation. It was suggested that the outcomes may have resulted from the change in the work environment when the new assessment system was

implemented. Therefore, it was decided during the evaluation design process that there should be an internal control group that would participate in the assessment process without it affecting their compensation other than the current system does. There would still be an external control group, hereafter referred to as the comparison group. With these three groups the effect of the link between assessment and contribution could be more closely examined. The experimental, control and comparison groups should be as similar in composition as possible. However, since the demonstration will be applied to a diverse group of employees throughout the institution and given the size of the participant pool it may be difficult to evaluate the comparison group as a whole. Therefore, the comparison group members may be selected from the non-participant group that most closely matches the functions performed by the participant group. Baseline data and comparisons among the three groups will be made and the information recorded and monitored over time.

After completing training on demonstration project procedures, employees will be asked to respond with a decision of their choice to participate. Once these individuals have been identified, final selection of the comparison group will be accomplished.

The specific measures to be collected using the different methods are determined from the goals and objectives stated for each intervention. Both qualitative and quantitative measures will be obtained. Most of the potential measures can be grouped around three major effectiveness criteria: speed, cost, and quality. Collectively, the outcomes of the interventions are hypothesized to lead to institution personnel management improvements, as reflected by timeliness, cost effectiveness, and quality.

Baseline measures will be taken prior to project implementation. Then, repeated post-implementation measurements will be taken to allow longitudinal comparisons by intervention within HINU To compare the effects of the intervention on the institution, two groups will be used to evaluate the effects on the personnel system, a control group located within the HINU and a comparison group comprised of employees external to the institution. These two groups will be selected and compared to the experimental group to determine the effects and outcomes of the project.

The effectiveness of each intervention and of the demonstration project as a whole in meeting stated objectives will be addressed using a multi-approach method. Some methods will be unobtrusive in that they do not require reactions to inputs from employees or managers. These methods include analysis of archival workforce data and personnel office data, review of logs maintained by site historians documenting contextual events, and assessments of external economic and legislative changes. Other methods, such as periodic attitude surveys, structured interviews, and focus groups, will be used to assess the perceptions of employees, managers, supervisors, and personnel regarding the personnel system changes and the performance of their institution in general. Evaluation activities will also take into account the unique nature of this project in terms of institutional diversity.

In addition to the intervention impact model, a general context model will be used to determine the effects of potential intervening variables (*e.g.*, annual budget, regionalization of the personnel function, and the general state of the economy). Potential unintended outcomes will also be monitored, and an attempt will be made by the evaluation team to link the outcomes of demonstration project interventions to institutional effectiveness. In addition to assessing the impact of the individual demonstration project features, the evaluation will also assess the impact of the project as a whole, along with possible in-context effects and effects of intervening variables.

The evaluation will also monitor impact on veterans and EEO groups, adherence to the Merit Systems Principles and avoidance of prohibited personnel practices. In addition, the evaluation will attempt to link the demonstration project effects and outcomes to institutional outcomes such as mission accomplishment and productivity.

The initial evaluation effort will consist of three main phases—baseline, formative, and summary evaluation covering five (5) years. Baseline will collect workforce data to determine the ''as-is''; state. The formative evaluation phase will include baseline data collection and analyses, implementation evaluation, and interim assessments. Periodic reports and annual summaries will be prepared to document the findings. The summary evaluation phase will focus on an overall assessment of the demonstration project outcomes, looking initially at the first four (4) years, with a follow-on report covering the first five (5) years. The rationale for summary evaluation after the first four years is to assess whether the demonstration will continue after the fifth year. If the analysis indicates that the interventions show a positive effect towards meeting the goals of the demonstration, then documentation will be generated to support a request that the demonstration progress further. If the analysis indicates that the interventions do not meet the stated objectives, or if HINU does not wish to continue in the demonstration, then documentation and planning for conversion back to the existing personnel system must be prepared. The fifth-year summary evaluation, used in reporting to Congress, will provide overall assessment of all initiatives individually and as a whole. It will also provide recommendations on broader Federal Government application.

VIII. Demonstration Projects Costs

A. Wage Grade to General Schedule Conversion Buy-Ins

Under this demonstration project, implementation of the broad banding pay structure based on the GS pay structure will incur a conversion cost in moving Wage Grade employees to the General Schedule. To facilitate conversion to this system without loss of pay, employees will receive a basic pay increase necessary to bring them into the General Schedule. As under the current system, supervisors will be able to withhold these pay adjustments if the employee's performance has fallen below fully successful.

B. Out-Year Project Costs

The overall demonstration cost strategy will be to balance projected costs with benefits of the demonstration to bring about the projected improvements to the institution. The project evaluation results will be used to ensure that out-year project costs will not outweigh the derived benefits to the demonstration. A baseline will be established at the start of the project, and salary expenditures will be tracked yearly. Implementation costs, including the WG conversion costs detailed above, will not be included in the cost evaluations, but will be accounted for separately.

The amount of money available for contribution increases in the out-years will be determined as part of the annual project evaluation process, starting with a review of the prior year's data for HINU by the Personnel Policy Board, and then will be reported to the President of the institution. The funds determination will be based on a

balancing of appropriate factors, including the following: (1) Historical spending for WGI, quality step increases, and in-level career promotions; (2) labor market conditions and the need to recruit and retain a skilled workforce to meet the business needs of the institution; and (3) the fiscal condition of the institution. Given the implications of base pay increases for long-term pay and benefit costs, the compensation levels will be determined after cost analysis with documentation of the mission-driven rationale for the amount. As part of the evaluation of the project, HINU will track the base pay costs (including average salaries) under the demonstration project and compared to the base pay costs under similar demonstration projects and under a simulation model that replicates General Schedule spending. These evaluations will balance costs incurred against benefits gained, so that both fiscal responsibility and project success are given appropriate weight.

C. Personnel Policy Boards

It is envisioned that HINU shall establish a Personnel Policy Board for the demonstration project that will be representative of the employee population and chaired by the President of the institution or delegated representative. The board is tasked with the following:

(a) Overseeing the pay budget;

(b) Determining the composition of the CCAS pay pool in accordance with the established guidelines and statutory constraints;

(c) Reviewing operation of the Institution's CCAS pay pools;

(d) Providing guidance to pay pool managers;

(e) Administering funds to CCAS pay pool managers;

(f) Reviewing hiring and promotion salaries;

(g) Monitoring award pool distribution by pay pool; Assessing the need for changes to the demonstration project, procedures or policies.

D. Developmental Costs

Costs associated with the development of the demonstration system include software automation, training, and project evaluation. Site-specific costs for follow-on training, employee salary conversion, and any in-house software automation will be borne by the institution from such additional sums as may be necessary for the operation of HINU pursuant to Public Law 105–337. The projected annual expenses for each area are summarized in Table III. Project evaluation costs will continue for at least the first five (5) years and may continue beyond that point. TABLE III is an example of the format used. Costs will be determined once an actual plan is selected.

TABLE III.—PROJECTED DEVELOPMENT COST

[Then year dollar ($K) by fiscal years]

	2000	2001	2002	2003	2004	2005	2006
Personnel Costs	150,000	425,000	400,000	400,000	400,000	400,000	400,000
Travel and Per Diem	25,000	5,000	5,000	5,000	5,000	5,000	5,000
Training	25,000	25,000	5,000	5,000	5,000	5,000	5,000
Project Evaluation	0	75,000	50,000	50,000	50,000	50,000	50,000
Automation	25,000	25,000	25,000	25,000	25,000	25,000	25,000
Data Systems	0	75,000	5,000	5,000	5,000	5,000	5,000

IX. Required Waivers to Law and Regulations

A. Waivers to Title 5, United States Code

Chapter 5, Section 552a: Records maintained on individuals. This section is waived only to the extent required to clarify that volunteers under the Voluntary Emeritus Program are considered employees of the Federal Government for purposes of this section.

Chapter 31, Section 3111: Acceptance of volunteer service. This section is waived only to the extent required to allow volunteer service under provisions of the voluntary emeritus program.

Chapter 33, Section 3308: Competitive service; examinations; education requirements prohibited; exceptions (to the extent necessary to accommodate the Scholastic Achievement Appointment's requirement for a college degree).

Chapter 33, Section 3317 (a): Competitive service; certification from registers (insofar as ''rule of three'' is eliminated under the demonstration project).

Chapter 33, Section 3318 (a): Insofar as ''rule of three'' is eliminated under the demonstration project. Veterans' preference provisions remain unchanged.

Chapter 41, Section 4107 (a): Prohibition of training for academic degrees.

Chapter 43, Sections 4301–4305 except for 4303 (e) and (f): Related to performance appraisal. In turn, 4303 (3) and (f) are waived only to the extent necessary to (a) substitute ''broadband'' for ''grade'' and (2) provide that moving to a lower broadband as a result of not receiving the full amount of a general pay increase because of inadequate contribution is not an action covered by the provisions of section 4303.

Chapter 51, Sections 5101–5102 and Sections 5104–5107: Related to classification standards and grading.

Chapter 53, Sections 5301; 5302 (8) and (9); and 5303–5305 and 5331–5336: Related to special pay and pay rates and systems (Sections 5301, 5302 (8) and (9), and 5304 are waived only to the extent necessary to allow demonstration project employees to be treated as General Schedule employees and to allow basic rates of pay under the demonstration project to be treated as scheduled rates of basic pay).

Chapter 53, Section 5362: Grade retention.

Chapter 53, Section 5363: Pay retention. This waiver applies only to the extent necessary to: (1) allow demonstration project employees to be treated as General Schedule employees; (2) provide that pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced; and (3) replace the term ''grade'' with ''broadband level.'' Chapter 71, to the extent its provisions (e.g. 5 U.S.C. 7103(a)(12) and 7116) would prohibit management or the union from unilaterally terminating negotiations over whether the project will apply to employees represented by the union.

Chapter 75, Sections 7512(3): Related to adverse action (but only to the extent necessary to exclude reductions in broadband level not accompanied by a reduction in pay and replace ''grade'' with ''broadband level'') and 7512(4): Related to adverse action (but only to

the extent necessary to exclude conversions from a General Schedule special rate to demonstration project pay that do not result in a reduction in the employee's total rate of pay).

B. Waivers to Title 5, Code of Federal Regulations

Part 300, Sections 300.601 through 300.605: Time-in-grade restrictions.

Part 308, Volunteer service: Waived to allow volunteer service under the provisions of the voluntary emeritus program.

Part 315, Sections 315.801 and 315.802: Probationary period.

Part 316, Section 316.303: Tenure of term employees (to the extent that term employees may compete for permanent status through local merit promotion plans).

Part 316, Section 316.305: Eligibility for within-grade increases.

Part 332, Section 332.402: ''Rule of three'' will not be used in the demonstration project.

Part 332, Section 332.404: Order of selection is not limited to highest three eligible.

Part 351, Sections 351.402 through 351.403: Competitive Area and Competitive Levels; Section 351.504(a) and (c): Credit for Performance; and Section 351.601 through .608: References to competitive levels are eliminated.

Part 351, Sections 351.701 (b) and (c): Assignment rights (bump and retreat): To the extent that the distinction between bump and retreat is eliminated and the placement of demonstration project employees is limited to one broadband level below the employee's present level, except that a preference-eligible employee with a compensable service-connected disability of 30 percent or more may displace up to two broadband levels below the employee's present position (or the equivalent of five General Schedule grades) below the employee's present level.

Part 410, Section 410.308(a): Prohibition of training for academic degrees.

Part 430, Subpart A and Subpart B: Performance management; performance appraisal.

Part 432, Sections 432.101, 432.102, 432.106 and 432.107: (Only to the extent necessary to (a) substitute broadband for grade and (2) provide that moving to a lower broadband as a result of not receiving the full amount of a general pay increase because of inadequate contribution is not an action covered by the provisions of section 4303).

Part 432, Section 432.103 through 432.105: Performance-based reduction-in-grade and removal actions.

Part 451, Sections 451.106(b) and 451.107(b): Awards.

Part 511, Section 511.201: Coverage of and exclusions from the General Schedule (To the extent that positions are covered by broadbanding.) Part 511, Subpart A; Subpart B; subpart F, Sections 511.601 through 511.612: Classification within the General Schedule; and Subpart G: Effective Dates of Position Classification Actions or Decisions.

Part 530, Subpart C: Special salary rates.

Part 531, Subpart B, Subpart D, Subpart E: Determining rate of pay; within-grade increases and quality step increases.

Part 536, Grade and Pay Retention (only to the extent necessary to eliminate grade retention and to provide that, for the purposes of applying pay retention provisions: (1) Demonstration project employees are to be treated as General Schedule employees; (2) grade is replaced by Broadband level; and (3) pay retention provisions do not apply to conversions from General Schedule special rates to demonstration project pay, as long as total pay is not reduced).

Part 550, Sections 550.703: Severance Pay, definition of ''reasonable offer'' (by replacing ''two grade or pay levels'' with ''one broadband level'' and ''grade or pay level'' with ''broadband level'').

Part 575, Sections 575.102(a)(1), 575.202(a)(1), 575.302(a)(1), and Subpart D: Recruitment and relocation bonuses, and retention allowances, and supervisory differentials (only to the extent necessary to allow employees and positions under the demonstration project to be treated as employees and positions under the General Schedule positions).

Part 752, Sections 752.401(a)(3): Reduction in grade and pay (but only to the extent necessary to exclude reductions in broadband level not accompanied by a reduction in pay and to replace grade with broadband level) and 752.401(a)(4) (but only to the extent necessary to exclude conversions from a General Schedule special rate to demonstration project pay that do not result in a reduction in the employees' total rate of pay).

Part 2635, (only to the extent necessary to allow outside employment and activities that may conflict with their official duties and responsibilities.)

[FR Doc. 00–16430 Filed 6–29–00; 8:45 am]

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Federal Register

Friday,
June 30, 2000

Part IX

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1917, 1918, and 1919

Longshoring, Marine Terminals, and Gear Certification; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1917, 1918, and 1919

[Docket No. S–025]

RIN 1218–AA56

Longshoring, Marine Terminals, and Gear Certification

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; technical amendments.

SUMMARY: The Occupational Safety and Health Administration (OSHA) comprehensively revised its Safety and Health Regulations for Longshoring and those parallel sections of its Marine Terminals Standard with the publication of a final rule in the **Federal Register** on July 25, 1997. These rules address cargo handling and related activities conducted aboard vessels (the Longshoring Standard) and landside operations at marine terminals (the Marine Terminals Standard). The final rule contained typographical and other errors. This document corrects those errors. This document also corrects several cross-references to the rules that are found in the rules on gear certification. These cross-references are changed because the referenced section numbers have changed as a result of the revisions to the longshoring and marine terminals rules.

DATES: Effective on June 30, 2000. The Incorporation By Reference of a publication listed in the regulations is approved by the Director of the **Federal Register** as of June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Paul Rossi, Office of Maritime Safety Standards, Room N 3609, 200 Constitution Avenue, NW, Washington, DC 20210, Telephone (202) 693–2086 (not a toll-free call).

SUPPLEMENTARY INFORMATION: This document makes technical amendments to Parts 29 CFR 1917, 29 CFR 1918, and 29 CFR Part 1919. OSHA comprehensively revised 29 CFR parts 1917 and 1918 on July 25, 1997 (62 FR 40142). In accordance with the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. § 553) and 29 CFR 1911.5, OSHA hereby finds good cause to publish these amendments without any further delay or public procedure. No stakeholder is likely to object to these amendments, as will be demonstrated in the following description of the technical amendments. In fact, the need for many of these amendments was pointed out to OSHA by stakeholders.

The types of amendments fall into nine basic categories: (1) Corrections of errors where text was inadvertently omitted or incorrectly spelled; (2) corrections of incorrect citations or cross-references; (3) corrections to provide parallel language between the two Parts (Part 1917 and Part 1918, Marine Terminals and Longshoring Operations, respectively) where the regulatory intent is identical; (4) corrections to eliminate a duplicative requirement; (5) corrections to revise mandatory language where the language was only intended to be illustrative; (6) clarifications of regulatory text to better reflect the regulatory intent; (7) technical drafting corrections; (8) corrections of errors made when converting from English units to metric units; and (9) editorial corrections to Safe Working Load Tables and Charts.

The first category, errors where text was inadvertently omitted or incorrectly spelled, includes ten of the amendments (because some of the amendments involve multiple revisions, amendments may fall into more than one category). Amendment #4 corrects the acronym for Incorporation By Reference to IBR. Amendment #4 also adds one Incorporation By Reference approval that was inadvertently omitted. Amendment #8 and the first part of amendment #46 correct the ''a'' in the reference ''Note to paragraph a'' from a capital ''a'' to a lower case ''a.'' Similarly, amendment #33 corrects the ''b'' in the reference ''Note to paragraph b'' from a capital ''b'' to a lower case ''b,'' and the second part of amendment #48 corrects the ''f'' in the reference ''Note to paragraph f'' from a capital ''f'' to a lower case ''f.'' The second part of amendment #14 and the second part of amendment #45 add identical sentences to each Part (Parts 1917 and 1918) requiring inspection and retesting following the repair of damaged special stevedoring gear. The sentence states, ''In addition, any special stevedoring gear that suffers damage necessitating structural repair shall be inspected and retested after repair and before being returned to service.'' This requirement was proposed to be included in section 1917.50, paragraph (c)(5)(i) and in section 1918.61, paragraph (f)(1) and received only favorable comment. The final rule inadvertently failed to include this requirement in the two rules. The first part of amendment #3 and amendment #16 correct a typographical error in the former standard that was included in the final rule and not identified until after publication. These amendments replace the term ''brailwater'' with the correct term, ''bailwater.'' The third part of amendment #43 corrects a typographical error by changing the words ''greater than'' to ''less than'' in an exception to the rules of cargo hooks that now correctly reads: ''Exception: This provision shall not apply when the construction of the vessel and the operation in progress are such that fall angles are less than 120 degrees.'' This correction reflects the correct wording of the exception in the former rule as well as the proposed rule.

The third part of amendment #46 adds an exception to the requirement for positively securing the pins of screw pin shackles. The exception was in the former and proposed rules and was inadvertently left out of the final rule. The fourth part of amendment #46 adds the words ''Exception: Manufacturers'' test certificates indicating performance to the criteria in § 1919.31 (a), (c) and (d) shall be acceptable.'' This exception was in the proposed rule and was inadvertently left out of the final rule.

Amendment #49 adds the words ''a closed'' so that the text now reads ''* * * equipped with switches of a type that must be manually held in a closed position.'' The words ''a closed'' were in the former rule and the proposed rule, but were inadvertently omitted in the final rule.

The second part of amendment #51 adds a type of ramp (bow) that was inadvertently omitted in both the proposal and the final rule but more accurately reflects the regulatory intent of the overall provision.

The second category, incorrect citations or cross-references, includes eleven amendments. Amendments #2, #5, and #6 correct references to paragraphs in the final rule's definition section; in the final rule, definitions appeared in alphabetical, rather than numerical, order. The first part of amendment #14 amends the section heading of § 1917.50 by adding a reference to a new chart in newly added Appendix I of Part 1917. This chart replaces a simple reference that was in Appendix IV in Part 1918 citing its applicability to Part 1917. The first part of amendment #9, the second part of amendment #15, amendment #17, the first part of amendment #41, the first part of amendment #50, the first part of amendment #55, and amendment #56 correct simple cross-referencing errors.

Amendments #61 and #62 correct cross-references found in Part 1919, Gear Certification, to sections in Parts 1917 and 1918. These cross-references have changed because of the final rule's revisions to Parts 1917 and 1918.

The third category, corrections to provide parallel language between the two Parts (Part 1917 and Part 1918, Marine Terminals and Longshoring) where the regulatory intent is identical, includes six amendments. The second part of amendment #9 adds a footnote to Part 1917 addressing the emergency action plan requirement that was intended to be identical to the corresponding footnote in the Longshoring rule.

The eighth part of amendment #14 adds parallel language that exempts certain types of cargo handling gear from the certification requirements of § 1917.50. This includes gear used only for handling or holding hoses, handling ship's stores or handling the gangway. OSHA intended that this exemption apply to both longshoring and marine terminals. This amendment carries over the exemptions as found in the Longshoring Regulations, in § 1918.2, under the definition of ''Vessels's cargo handling gear.''

The second part of amendment #55 corrects editorially the parallel footnote in Part 1918. The second part of amendment #11 makes the regulatory language addressing the hazard of employees riding elevated powered industrial trucks identical in both Parts. Amendment #31 adds the previously mentioned chart at the end of Part 1917 titled: ''Special Cargo Gear and Container Spreader Test Requirements,'' as newly added Appendix I. This chart closely parallels the chart found in Part 1918, Appendix IV. This amendment also replaces a reference to Part 1917 in the introductory language to Appendix IV in Part 1918, with the actual chart being added to the end of Part 1917. The first part of amendment #48 adds a sentence concerning holding brakes to Part 1918, which is found in the parallel section in Part 1917.

The fourth category, eliminating a duplicative requirement, involves two amendments. The second part of amendment #3 moves a repeated definition of ''dockboards'' from § 1917.124(b) to the definitions section (§ 1917.2) and also corrects the existing definition in § 1917.2 by adding language that was inadvertently omitted but was in the definition that was in § 1917.124. The scope section's incorporation by reference of OSHA's general industry standard on the servicing of multi-piece and single-piece rim wheels makes the inclusion of the text of these requirements in this Part unnecessary. Amendment #12 adds a reference to the scope section of Part 1917 that cross-references the servicing of multi-piece and single-piece rim wheels in Part 1910.

The fifth category, correcting mandatory language where illustrative language was intended, includes the first part of amendment #15 and the third part of amendment #51. This change involves language in a Note that was intended merely to provide an example of what would be acceptable, but was inadvertently expressed in mandatory language. The amendments address parallel sections in both Parts (Part 1917 and Part 1918, Marine Terminals and Longshoring Operations) that require the use of high visibility vests.

The sixth category, clarifying regulatory text to better reflect regulatory intent, includes five amendments. The first and second part of amendment #18 and amendment #57 make it clear that any Personal Flotation Devices used must be marked for use as work vests, for commercial use, or for use on vessels. Amendment #44 replaces the term ''gypsy head'' with the more appropriate term ''winch head.'' The third part of amendment #46 replaces the word ''moused'' with the more appropriate term ''positively secured.'' Amendment 59 rearranges the chart in mandatory Appendix IV titled ''Special Cargo Gear and Container Spreader Test Requirements.'' The reference to the charts' applicability to § 1917.50 has been deleted and the actual chart has been added to the end of Part 1917 (see amendment #31). The symbol ''>'' is replaced by the words ''greater than'' to avoid confusion, the table heading is rearranged for clarity, and a Note to Appendix IV is added to clarify how special gear that was in use prior to the publication of the current rule is assumed to have been tested.

The seventh category, technical drafting corrections, includes four amendments. The first part of amendment #26 deletes two definitions that were moved to the definitions section (§ 1917.2) and reserves the paragraph that the definitions were in. The first part of amendment #51 and amendment #52, which contained a footnote explaining the term ''Ro-Ro'' operations,'' is replaced by a reference to the definitions section. The third part of amendment #34 adds the term ''Ro-Ro operations'' and a definition of these operations to the definition section of the Longshoring rule.

The eighth category includes corrections of errors that were made when converting from English units to metric units. This includes errors in conversion calculations, changes to different units for the purpose of consistency, and changing from one decimal place to two decimal places for the purpose of consistency. The amendments are: the second parts of #3; #7; the first, third, and fourth parts of amendment #10; the first and third parts of #11; #13; the second, third, fourth, fifth, sixth and seventh parts of #14; the third part of #15; the first, second, third, and fourth parts of #19; the first, second, and third parts of #20; #21; #22; #23; #24; #25; the second parts of #26; #27; #28; #29; #30; #31; the first and second parts of #34; #35/36; #37; #38; #39; the first and second parts of #40; #41; the first and second parts of #43; #45; #47; the second and third parts of #50, and the first and second parts of #53.

The ninth, and final category, corrects numerical errors in the Safe Working Load Tables and Charts. This includes amendments #10 and the first and third parts of #57.

Authority: This document has been prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210. These technical amendments are made pursuant to sections 4, 6 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR Part 1911.

List of Subjects

29 CFR Part 1917

Freight, Hazardous substances, Incorporation By Reference, Longshore and harbor workers, Occupational safety and health, Reporting and recordkeeping requirements.

29 CFR Part 1918

Freight, Hazardous substances, Longshore and harbor workers, Occupational safety and health, Reporting and recordkeeping requirements, Vessels.

29 CFR Part 1919

Freight, Longshore and harbor workers, Occupational safety and health, Reporting and recordkeeping requirements, Vessels.

Signed at Washington, DC this 19th day of June, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

Accordingly, we are making the following technical amendments to 29 CFR Parts 1917, 1918, and 1919 as set forth below:

PART 1917—MARINE TERMINALS

1. The authority citation for Part 1917 continues to read in part as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941);

Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 6–96 (62 FR 111), as applicable; 29 CFR Part 1911.

* * * * *

2. In § 1917.1, revise paragraph (a) introductory text to read as follows:

§ 1917.1 Scope and applicability.

(a) The regulations of this part apply to employment within a marine terminal as defined in § 1917.2, including the loading, unloading, movement or other handling of cargo, ship's stores or gear within the terminal or into or out of any land carrier, holding or consolidation area, any other activity within and associated with the overall operation and functions of the terminal, such as the use and routine maintenance of facilities and equipment. All cargo transfer accomplished with the use of shore-based material handling devices shall be regulated by this part.

* * * * *

3. In § 1917.2, revise the definition of *Confined space,* remove the definition of *Dockboard,* and add definitions of *Dockboards* and *Ramps* in alphabetical order to read as follows:

§ 1917.2 Definitions.

* * * * *

Confined space means:

(1) A space having all of the following characteristics:

(i) Small size;

(ii) Severely limited natural ventilation;

(iii) Capability to accumulate or contain a hazardous atmosphere;

(iv) Exits that are not readily accessible; and

(v) A design not meant for continuous human occupancy.

(2) Examples of confined spaces are intermodal tank containers, bailwater tanks and portable tanks.

* * * * *

Dockboards (car and bridge plates) mean devices for spanning short distances between rail cars or highway vehicles and loading platforms that do not expose employees to falls greater than 4 feet (1.22 m).

* * * * *

Ramps mean other flat-surface devices for passage between levels and across openings not covered under ''dockboards.''

4. In § 1917.3, revise paragraph (b) to read as follows:

§ 1917.3 Incorporation by reference.

* * * * *

(b) The following material is available for purchase from the American National Standards Institute (ANSI), 11 West 42nd St., New York, NY 10036:

(1) ANSI A14.1–1990, Safety Requirements for Portable Wood Ladders; IBR approved for § 1917.119(c).

(2) ANSI A14.2–1990, Safety Requirements for Portable Metal Ladders; IBR approved for § 1917.119(c).

(3) ANSI A14.5–1992, Safety Requirements for Portable Reinforced Plastic Ladders; IBR approved for § 1917.119(c).

(4) ANSI Z–87.1–1989, Practice for Occupational and Educational Eye and Face Protection; IBR approved for § 1917.91(a)(1).

(5) ANSI Z–89.1–1986, Personnel Protection-Protective Headwear for Industrial Workers-Requirements; IBR approved for § 1917.93(b).

(6) ANSI Z–41–1991, American National Standard for Personal Protection-Protective Footwear; IBR approved for § 1917.94(b).

(7) ASME B56.1, 1959, Safety Code for Powered Industrial Trucks, pages 8 and 13; IBR approved for § 1917.50(j)(1).

5. In § 1917.23, revise the section heading and paragraph (a) to read as follows:

§ 1917.23 Hazardous atmospheres and substances (see also § 1917.2 Hazardous cargo, material, substance or atmosphere).

(a) *Purpose and scope.* This section covers areas in which the employer is aware that a hazardous atmosphere or substance may exist, except where one or more of the following sections apply: § 1917.22 Hazardous cargo; § 1917.24 Carbon monoxide; § 1917.25 Fumigants, pesticides, insecticides and hazardous preservatives; § 1917.73 Terminal facilities handling menhaden and similar species of fish; § 1917.152 Welding, cutting, and heating (hot work); and § 1917.153 Spray painting.

* * * * *

6. The section heading to § 1917.25 is revised to read as follows:

§ 1917.25 Fumigants, pesticides, insecticides and hazardous preservatives (see also § 1917.2 Hazardous cargo, material, substance or atmosphere).

* * * * *

7. In § 1917.26, revise paragraph (f) to read as follows:

§ 1917.26 First aid and lifesaving facilities.

* * * * *

(f) A U.S. Coast Guard approved 30-inch (76.2 cm) life ring, with at least 90 feet (27.43m) of line attached, shall be available at readily accessible points at each waterside work area where the employees' work exposes them to the hazard of drowning. Employees working on any bridge or structure leading to a detached vessel berthing installation shall wear U.S. Coast Guard approved personal flotation devices except where protected by railings, nets, or safety belts and lifelines. A readily available portable or permanent ladder giving access to the water shall also be provided within 200 feet (61 m) of such work areas.

8. In § 1917.27, revise the Note to paragraph (a)(2) to read as follows:

§ 1917.27 Personnel.

(a) * * *

(2) * * *

Note to paragraph (a)(2): OSHA is defining suddenly incapacitating medical ailments consistent with the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 (1990). Therefore, employers who act in accordance with the employment provisions (Title I) of the ADA (42 U.S.C. 12111–12117), the regulations implementing Title I (29 CFR Part 1630), and the Technical Assistance Manual for Title I issued by the Equal Employment Opportunity Commission (Publication number: EEOC—M1A), will be considered as being in compliance with this paragraph.

* * * * *

9. In § 1917.30, revise paragraph (a)(1), and add footnote 3a to read as follows:

§ 1917.30 Emergency action plans.

(a) *Emergency action plans.* (1) *Scope and application.* This paragraph (a) requires all employers to develop and implement an emergency action plan.[3a] The emergency action plan shall be in writing (except as provided in paragraph (a)(5)(iv) of this section) and shall cover those designated actions employers and employees must take to ensure employee safety from fire and other emergencies.

* * * * *

10. In § 1917.42, revise TABLE C–1 in paragraph (b)(4), paragraph (d)(2), TABLE C–3 in paragraph (i)(2), and paragraph (k)(3) to read as follows:

§ 1917.42 Miscellaneous auxiliary gear.

* * * * *

(b) * * *

(4) * * *

[3a] When an employer directs his employees to respond to an emergency that is beyond the scope of the Emergency Action Plan developed in accordance with this section, then § 1910.120(q) of this chapter shall apply.

TABLE C–1.—NUMBER AND SPACING OF U-BOLT WIRE ROPE CLIPS

Improved plow steel, rope diameter (inches/(cm))	Minimum number of clips		Minimum spacing (inches/(cm))
	Drop forged	Other material	
½ or less (1.3)	3	4	3 (7.6)
⅝ (1.6)	3	4	3¾ (9.5)
¾ (1.9)	4	5	4½ (11.4)
⅞ (2.2)	4	5	5¼ (13.3)
1 (2.5)	5	7	6 (15.2)
1⅛ (2.9)	6	7	6¾ (17.1)
1¼ (3.2)	6	8	7½ (19.1)
1⅜ (3.5)	7	8	8¼ (21.0)
1½ (3.8)	7	9	9 (22.9)

* * * * *

(d) * * *

(2)(i) Unless otherwise recommended by the manufacturer, when synthetic fiber ropes are substituted for fiber ropes of less than three inches (7.62 cm) in circumference, the substitute shall be of equal size. Where substituted for fiber rope of three inches or more in circumference, the size of the synthetic rope shall be determined from the formula:

$$C = \pm\sqrt{0.6C_s^2 + 0.4C_m^2}$$

Where C = the required circumference of the synthetic rope in inches, Cs= the circumference to the nearest one-quarter inch of a synthetic rope having a breaking strength not less than that of the size fiber rope that is required by paragraph (c) of this section and Cm= the circumference of the fiber rope in inches that is required by paragraph (c) of this section.

(ii) In making such substitution, it shall be ascertained that the inherent characteristics of the synthetic fiber are suitable for hoisting.

* * * * *

(i) * * *

(2) * * *

TABLE C–3.—SAFE WORKING LOADS FOR SHACKLES

Material size		Pin diameter		Safe working load in 2,000 lb tons
Inches	(cm)	Inches	(cm)	
½	(1.3)	⅝	(1.6)	1.4
⅝	(1.6)	¾	(1.9)	2.2
¾	(1.9)	⅞	(2.2)	3.2
⅞	(2.2)	1	(2.5)	4.3
1	(2.5)	1⅛	(2.9)	5.6
1⅛	(2.9)	1¼	(3.2)	6.7
1¼	(3.2)	1⅜	(3.5)	8.2
1⅜	(3.5)	1½	(3.8)	10.0
1½	(3.8)	1⅝	(4.1)	11.9
1¾	(4.4)	2	(5.1)	16.2
2	(5.1)	2¼	(5.7)	21.2

* * * * *

(k) *Pallets.* * * *

(3) Reusable wing or lip-type pallets shall be hoisted by bar bridles or other suitable gear and shall have an overhanging wing or lip of at least three inches (7.62cm). They shall not be hoisted by wire slings alone.

* * * * *

11. In § 1917.43, revise paragraphs (b)(3),(e)(1)(ii), (e)(6)(vi), and (g)(2)(i)(C) to read as follows:

§ 1917.43 Powered industrial trucks.

* * * * *

(b) *General.* * * *

(3) When a powered industrial truck is left unattended, load-engaging means shall be fully lowered, controls neutralized and brakes set. Unless the truck is in view and within 25 feet (7.62 m) of the operator, power shall be shut off. Wheels shall be blocked or curbed if the truck is on an incline.

* * * * *

(e) *Fork lift trucks.* (1) *Overhead guards.* * * *

(ii) Overhead guards shall not obstruct the operator's view, and openings in the top of the guard shall not exceed six inches (15.24 cm) in one of the two directions, width or length. Larger openings are permitted if no opening allows the smallest unit of cargo being handled to fall through the guard.

* * * * *

(6) *Lifting of employees.* * * *

(vi) When the truck has controls elevated with the lifting carriage, means shall be provided for employees on the platform to shut off power to the vehicle.

* * * * *

(g) *Straddle trucks.* * * *

(2) * * *

(C) The drive chain shall be enclosed to a height of eight feet (2.44 m) except for that portion at the lower half of the lower sprocket.

* * * * *

12. In § 1917.44, revise paragraph (o) introductory text to read as follows:

§ 1917.44 General rules applicable to vehicles.[4]

* * * * *

(o) *Servicing multi-piece and single piece rim wheels.* Servicing of multi-

[4] The United States Coast Guard at 33 CFR 126.15(d) and (e) has additional regulations applicable to vehicles in terminals.

piece and single piece rim wheels is covered by § 1910.177 of this chapter. (See § 1917.1(a)(2)(xii)).

* * * * *

13. In § 1917.45, revise paragraphs (g)(8), (i)(5)(i)(A), (i)(5)(i)(B), (i)(5)(i)(C), and (j)(8) to read as follows:

§ 1917.45 Cranes and derricks (See also § 1917.50).

* * * * *

(g) * * *

(8) *Pedestrian clearance.* If the track area is used for employee passage or for work, a minimum clearance of three feet (.91 m) shall be provided between trucks or the structures of rail-mounted cranes and any other structure or obstruction. When the required clearance is not available on at least one side of the crane's trucks, the area shall not be used and shall be marked and identified.

* * * * *

(i) * * *

(5) * * *

(i) * * *

(A) For lines rated 50 kV or below, minimum clearance between the lines and any part of the crane or load shall be 10 feet (3.05 m);

(B) For lines rated over 50 kV, minimum clearance between the lines and any part of the crane or load shall be either 10 feet (3.05 m) plus 0.4 inch (10.16 mm) for each 1 kV over 50 kV, or twice the length of the line insulator, but never less than 10 feet; and

(C) In transit with no load and boom lowered, the clearance shall be a minimum of 4 feet (1.22 m).

* * * * *

(j) * * *

(8) When intermodal container spreaders are used to transfer employees to or from the tops of containers, the spreaders shall be equipped with a personnel platform equipped with fixed railings, provided that the railings have one or more openings for access. The openings shall be fitted with a means of closure, such as chains with hooks. Existing railings shall be at least 36 inches (0.91 m) in height. New railings installed after October 3, 1983 shall be 42 inches (1.07 m), plus or minus 3 inches (7.62 cm), in height. The provisions of paragraphs (j)(1)(iii)(C), (j)(1)(iii)(D), and (j)(1)(iii)(F) of this section also apply to personnel platforms when such container spreaders are used.

* * * * *

14. In § 1917.50, revise the section heading and paragraphs (c)(5)(i), (c)(5)(ii), (c)(5)(iv), (i)(2), (j)(1), (j)(2); and add new paragraph (j)(3) to read as follows:

§ 1917.50 Certification of marine terminal material handling devices (See also mandatory appendix I, of this part).

* * * * *

(c) * * *

(5) *Special gear.* (i) Special stevedoring gear provided by the employer, the strength of which depends upon components other than commonly used stock items such as shackles, ropes, or chains, and that has a Safe Working Load (SWL) greater than five short tons (10,000 lbs or 4.54 metric tons) shall be inspected and tested as a unit before initial use (see Table A in paragraph (c)(5)(ii) of this section). In addition, any special stevedoring gear that suffers damage necessitating structural repair shall be inspected and retested after repair and before being returned to service.

(ii) Special stevedoring gear provided by the employer that has a SWL of five short tons (10,000 lbs or 4.54 metric tons) or less shall be inspected and tested as a unit before initial use according to paragraphs (d) and (e) of this section or by a designated person (see Table A in this paragraph (c)(5)(ii)).

TABLE A

Safe working load	Proof load
Up to 20 short tons (18.1metric tons)	25 percent in excess.
From 20 through 50 short tons (18.1 to 45.4 metric tons	5 short tons in excess.
Over 50 short tons (45.4 metric tons)	10 percent in excess.

* * * * *

(iv) All cargo handling gear covered by this section with a SWL greater than five short tons (10,000 lbs. or 4.54 metric tons) shall be proof load tested according to Table A of this section every 4 years in accordance with paragraph (b) of this section or by a designated person.

* * * * *

(i) * * *

(2) All cargo handling gear provided by the employer with a safe working load greater than five short tons (10,000 lbs. or 4.54 metric tons) shall have its safe working load plainly marked on it.

(j) * * *

(1) Small industrial crane trucks as described on page 8 and illustrated on page 13 of ASME B56.1, 1959, ''Safety Code for Powered Industrial Trucks'', and powered industrial trucks;

(2) Any straddle truck not capable of straddling two or more intermodal containers 16 feet (4.88 m) in width; and

(3) Gear used only for handling or holding hoses, handling ship's stores or handling the gangway.

15. In § 1917.71, revise the note to paragraph (e), paragraph (f) introductory text, and paragraph (f)(1)(i)(F) to read as follows:

§ 1917.71 Terminals handling intermodal containers or roll-on roll-off operations.

* * * * *

(e) * * *

Note to paragraph (e): High visibility vests or equivalent protection means high visibility/retro-reflective materials which are intended to make the user clearly visible by day through the use of high visibility (fluorescent) material and in the dark by vehicle headlights through the use of retro-reflective material. For example, an acceptable area of material for a vest or equivalent protection is .5 m^2 (760 $in.^2$) for fluorescent (background) material and .13m^2 (197 $in.^2$) for retro-reflective material. Vests or equivalent protection, such as high visibility/retro-reflective coveralls, that are available for industrial use, may also be acceptable.

(f) Containers shall be handled using lifting fittings or other arrangements suitable and intended for the purpose as set forth in paragraphs (f)(1) through (f)(4) of this section, unless damage to an intermodal container makes special means of handling necessary.

(1) * * *

(i) * * *

(F) The length of the spreader beam is at least 16.3 feet (5 m) for a 20-foot container, and at least 36.4 feet (11.1 m) for a 40-foot container.

* * * * *

16. In § 1917.73, revise the section heading, paragraphs (a)(1), (b), and (e) to read as follows:

§ 1917.73 Terminal facilities handling menhaden and similar species of fish (see also § 1917.2, definition of hazardous cargo, material, substance or atmosphere).

(a)(1) Tanks in terminal areas used for receiving or storing bailwater for

recirculating into vessel holds in discharging operations shall be opened or ventilated to minimize contamination of water circulated to the vessel. Bailwater tanks shall be thoroughly drained upon completion of each day's operations and shall be left open to the air. Drainage is unnecessary when bailwater has been treated to remove hydrogen sulfide-producing contaminants and the efficiency of such treatment has been established by the employer.

* * * * *

(b) Pipelines and hoses on the dock or terminal used for receiving and circulating used bailwater shall be completely drained upon completion of each day's operation and left open to the air.

* * * * *

(e) Supervisory personnel shall be on hand at dockside to supervise discharging of bailwater from vessels.

17. Revise § 1917.92, to read as follows:

§ 1917.92 Respiratory protection.

(See § 1917.1(a)(2)(x)).

18. In § 1917.95, add a heading to paragraph (b) and revise paragraphs (b)(1) introductory text and (b)(2) to read as follows:

§ 1917.95 Other protective measures.

* * * * *

(b) *Personal flotation devices* (*PFDs*). (1) The employer shall provide, and shall direct the wearing of PFDs for those employees, such as line handlers, who are engaged in work in which they may be pulled into the water:

* * * * *

(2) PFDs (life preservers, life jackets, or work vests) worn by each affected employee must be United States Coast Guard (USCG) approved pursuant to 46 CFR part 160 (Type I, II, III, or V PFD) and marked for use as a work vest, for commercial use, or for use on vessels.

* * * * *

19. In § 1917.112, revise paragraphs (c)(3), (c)(4), (d) and (e) introductory text to read as follows:

§ 1917.112 Guarding of edges.

* * * * *

(c) * * *

(3) The top surface of guardrails installed before October 3, 1983, shall be at least 36 inches (0.91 m) high. Those installed after October 3, 1983, shall be 42 inches (1.07 m), plus or minus 2 inches (5.1 cm), high.

(4) Any non-rigid railing such as chain or wire rope shall have a maximum sag limit at the mid-point between posts of not more than 6 inches (15.24 cm).

* * * * *

(d) *Toeboards.* Toeboards shall be provided when employees below could be exposed to falling objects such as tools. Toeboards shall be at least 3½ inches (8.9 cm) in height from top edge to floor level, and be capable of withstanding a force of 50 pounds (222 N) applied in any direction. Drainage clearance under toeboards is permitted.

(e) *Stair railings.* Stair railings shall be capable of withstanding a force of at least 200 pounds (890 N) applied in any direction, and shall not be more than 36 inches (0.91 m) nor less than 32 inches (0.81 m) in height from the upper top rail surface to the tread surface in line with the leading edge of the tread. Railings and midrails shall be provided at any stairway having four or more risers, as follows:

* * * * *

20. In § 1917.117, revise paragraphs (i), (j)(4), and (n) to read as follows:

§ 1917.117 Manlifts.

* * * * *

(i) *Emergency ladder.* A fixed emergency ladder accessible from any position on the lift and in accordance with the requirements of § 1917.118(d) shall be provided for the entire run of the manlift.

(j) * * *

(4) Landings shall be of sufficient size and strength to support 250 pounds (1,112 N).

* * * * *

(n) *Top clearance.* A clearance of at least 11 feet (3.35 m) shall be provided between the top landing and the ceiling.

* * * * *

21. In § 1917.118, revise paragraphs (d)(1)(i), (d)(1)(ii), (d)(2)(ii), (d)(4), (e)(2)(iii), (e)(3)(ii), (e)(5)(iii), (e)(5)(iv), and (f)(2) to read as follows:

§ 1917.118 Fixed ladders.

* * * * *

(d) *Ladder specifications.* (1)(i) Ladders installed before October 3, 1983, shall be capable of withstanding without damage a minimum concentrated load, applied uniformly over a 3½ inch (8.9 cm) width at the rung center, of 200 pounds (890 N).

(ii) Ladders installed after October 3, 1983 shall be capable of withstanding 250 pounds (1,112 N) applied as described in paragraph (d)(1)(i) of this section. If used by more than one employee simultaneously, the ladder as a unit shall be capable of simultaneous additional loading in 250 pound (1,112 N) increments for each additional employee, applied to a corresponding number of rungs. The unit shall have a safety factor of four (4), based on ultimate strength, in the designed service.

(2) * * *

(ii) Ladders installed after October 3, 1983 shall have rungs evenly spaced from 12±2 inches (30.5±5.08 cm) apart, center to center.

* * * * *

(4) The minimum distance between the rung center line and the nearest permanent object behind the rung shall be 4 inches (10.16 cm), except that in ladders installed after October 3, 1983, the minimum distance shall be 7 inches (17.78 cm) unless physical limitations make a lesser distance, not less than 4½ inches (11.43 cm), necessary.

* * * * *

(e) *Protection against falls.* * * *

(2) * * *

(iii) A landing platform capable of supporting a load of 100 pounds per square foot (4.79 kPa) and fitted with guardrails complying with Sec. 1917.112(c) shall be provided at least every 30 feet (9.14 m), except as specified in paragraph (e)(2)(iv) of this section.

* * * * *

(3) * * *

(ii) Located at intervals of 150 feet (45.7 m) or less; and

* * * * *

(5) * * *

(iii) Extend at least 36 inches (0.91m) above landings; and

(iv) Extend to within 8 feet (2.44 m) above the ground or base, except that a maximum of 20 feet (6.1 m) is permitted where the cage or well would extend into traffic lanes.

* * * * *

(f) * * *

(2) Form a continuous ladder, uniformly spaced vertically from 12 inches to 16 inches (30.5 to 40.6 cm) apart, with a minimum width of 10 inches (25.4 cm) and projecting at least 4½ inches (11.43 cm) from the wall;

* * * * *

22. In § 1917.119, revise paragraphs (b)(4), (d)(1), (d)(2), and (d)(3) to read as follows:

§ 1917.119 Portable ladders.

* * * * *

(b) * * *

(4) Width between side rails at the base of the ladder shall be at least 12 inches (30.48 cm) for ladders 10 feet (3.05 m) or less in overall length, and shall increase at least ¼ inch (0.64 cm) for each additional 2 feet (0.61 m) of ladder length.

* * * * *

(d) * * *

(1) Have a minimum and uniform distance between rungs of 12 inches (30.48 cm), center to center;

(2) Are capable of supporting a 250-pound (1,112 N) load without deformation; and

(3) Have a minimum width between side rails of 12 inches (30.48 cm) for ladders 10 feet (3.05 m) in height. Width between rails shall increase at least ¼ inch (0.64 cm) for each additional 2 feet (0.61 m) of ladder length.

* * * * *

23. In § 1917.120, revise paragraphs (b)(1), (b)(2), (b)(4), and (b)(5)(ii) to read as follows:

§ 1917.120 Fixed stairways.

* * * * *

(b) *New installations.* (1) Fixed stairs installed after October 3, 1983 shall be positioned within the range of 30 degrees to 50 degrees to the horizontal with uniform riser height and tread width throughout each run and be capable of a minimum loading of 100 pounds per square foot (445 N) and a minimum concentrated load of 300 pounds (1,334 N) at the center of any treadspan. Riser height shall be from 6 to 7.5 inches (15.24 to 19.05 cm), stair width a minimum of 22 inches (55.88 cm) between vertical barriers, tread depth a minimum of 12±2 inches (30.48±5.08 cm), and tread nosing shall be straight leading edges.

(2) Stair landings shall be at least 20 inches (50.8 cm) in depth. Where doors or gates open on a stairway, a landing platform shall be provided. Door swing shall not reduce effective standing area on the landing to less than 18 inches (45.72 cm) in depth.

* * * * *

(4) Railing height from tread surface at the riser face shall be 33±3 inches (83.82 cm ±7.62 cm).

(5) * * *

(ii) Have open treads at least 4 inches (10.16 cm) in depth and 18 inches (45.72 cm) in width with a uniformly spaced vertical rise between treads of 6 to 9.5 inches (15.24 to 24.13 cm); and

* * * * *

24. In § 1917.121, revise the Table following Figure F–1 in paragraph (b)(1), paragraphs (b)(2) and (b)(4) to read as follows:

§ 1917.121 Spiral stairways.

* * * * *

(b) * * *

(1) * * *

SPIRAL STAIRWAY—MINIMUM DIMENSIONS

	A (half-tread width)	B
Normal use by employees	11 inches (27.94 cm)	6 inches (15.24 cm).
Limited access	9 inches (22.86 cm)	5 inches (12.7 cm).

(2) Stairway risers shall be uniform and shall range from 6½ to 10½ inches (16.5 to 26.67 cm) in height;

* * * * *

(4) Railings shall conform to the requirements of § 1917.112(c)(1). If balusters are used, there shall be a minimum of one per tread. Handrails shall be a minimum of 1¼ inches (3.18 cm) in outside diameter; and

* * * * *

25. In § 1917.122, revise paragraph (d) to read as follows:

§ 1917.122 Employee exits.

* * * * *

(d) The minimum width of any employee exit shall be 28 inches (71.12 cm).

26. In § 1917.124, remove and reserve paragraph (b), and revise paragraph (d)(2) to read as follows:

§ 1917.124 Dockboards (car and bridge plates).

* * * * *

(b) [Reserved]

* * * * *

(d) * * *

(2) Ramps shall be equipped with a guardrail meeting the requirement of § 1917.112(c)(1) if the slope is more than 20 degrees to the horizontal or if employees could fall more than 4 feet (1.22 m).

* * * * *

27. In § 1917.151, revise paragraphs (g)(4) and (h)(1) to read as follows:

§ 1917.151 Machine guarding.

* * * * *

(g) * * *

(4) Work rests shall be used on fixed grinding machines. Work rests shall be rigidly constructed and adjustable for wheel wear. They shall be adjusted closely to the wheel with a maximum opening of ⅛-inch (3.18 mm) and shall be securely clamped. Adjustment shall not be made while the wheel is in motion.

* * * * *

(h) *Rotating parts, drives and connections.* (1) Rotating parts, such as gears and pulleys, that are located 7 feet (2.13 m) or less above working surfaces shall be guarded to prevent employee contact with moving parts.

* * * * *

28. In § 1917.152, revise paragraphs (d)(1)(xvi), (d)(3)(ii), and (g)(3) to read as follows:

§ 1917.152 Welding, cutting and heating (hot work)[12] (See also § 1917.2, definition of Hazardous cargo, materials, substance or atmosphere).

* * * * *

(d) * * *

(1) * * *

(xvi) Shall be stored so that oxygen cylinders are separated from fuel gas cylinders and combustible materials by either a minimum distance of 20 feet (6.1 m) or a barrier having a fire-resistance rating of 30 minutes; and

* * * * *

(3) * * *

(ii) When oxygen and fuel gas hoses are taped together, not more than four (4) of each 12 inches (10.16 cm of each 30.48 cm) shall be taped.

* * * * *

(g) * * *

(3) Surfaces covered with preservative coatings shall be stripped for at least 4 inches (10.16 cm) from the area of heat application or employees shall be protected by supplied air respirators in accordance with the requirements of § 1910.134 of this chapter.

* * * * *

29. In § 1917.153, revise paragraphs (c)(4)(i), (d)(12), and (d)(13) to read as follows:

§ 1917.153 Spray painting (See also § 1917.2, definition of Hazardous cargo, materials, substance or atmosphere).

* * * * *

(c) * * *

(4)(i) No open flame or spark-producing equipment shall be within 20 feet (6.1 m) of a spraying area unless it

[12] The U.S. Coast Guard, at 33 CFR 126.15(c), requires prior permission of the Captain of the Port if welding or other hot work is to be carried out at a facility where dangerous cargoes as defined by 33 CFR 126.07 are located or being handled.

is separated from the spraying area by a fire-retardant partition.

* * * * *

(d) * * *

(12) Wiring, motors and equipment in a spray booth shall be of approved explosion-proof type for Class I, Group D locations and conform to subpart S of Part 1910 of this chapter for Class I, Division 1, Hazardous Locations. Wiring, motors and equipment within 20 feet (6.1m) of any interior spraying area and not separated by vapor-tight partitions shall not produce sparks during operation and shall conform to the requirements of subpart S of Part 1910 of this chapter for Class I, Division 2, Hazardous Locations.

(13) Outside electrical lights within 10 feet (3.05m) of spraying areas and not separated from the areas by partitions shall be enclosed and protected from damage.

* * * * *

30. In § 1917.156, revise paragraph (a)(7)(i) to read as follows:

§ 1917.156 Fuel handling and storage.

(a) * * *

(7) * * *

(i) Dispensing hoses do not exceed 50 feet (15.24 m) in length; and

* * * * *

31. At the end of Part 1917, add Appendix I, to read as follows:

Appendix I to Part 1917-Special Cargo Gear and Container Spreader Test Requirements (Mandatory) [see § 1917.50(c)(5)]

Type gear	Test requirement	Tested by	Proof test	
A. ALL SPECIAL CARGO HANDLING GEAR PURCHASED OR MANUFACTURED ON OR AFTER JANUARY 21, 1998				
1. Safe Working Load—greater than 5 short tons (10,000 lbs./4.5 metric tons).	Prior to initial use	OSHA accredited agency only	Up to 20 short tons	125% SWL
	Prior to reuse after structural damage repair		From 20 to 50 short tons	5 short tons in excess of SWL
	Every four years after initial proof load test	OSHA accredited agency or designated person (40)(1) 125% SWL	Over 50 short tons	110% SWL
2. Safe Working Load—5 short tons or less.	Prior to initial use Prior to reuse after structural damage repair	OSHA accredited agency or designated person	125% SWL	
3. Intermodal container spreaders not part of vessel's cargo handling gear.	Prior to initial use			
	Prior to reuse after structural damage repair	OSHA accredited agency only		
	Every four years after initial proof load test	OSHA accredited agency or designated person	125% SWL	
B. ALL SPECIAL CARGO HANDLING GEAR IN USE PRIOR TO JANUARY 21, 1998				
1. Any Safe Working Load	Every four years starting on January 21, 1998	OSHA accredited agency or designated person	Up to 20 short tons	125% SWL
	Prior to initial use or prior to reuse after structural damage repair	OSHA accredited agency	From 20 to 50 short tons	5 short tons in excess of SWL
			Over 50 short tons	110% SWL
2. Intermodal container spreaders not part of ship's gear.	Every four years starting on January 21, 1998	OSHA accredited agency or designated person		
	Prior to initial use or prior to reuse after structural damage repair	OSHA accredited agency	125% SWL	

PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

32. The authority citation for Part 1918 continues to read in part as follows:

Authority: Secs. 4, 6, and 8 of the Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; Walsh-Healey Act, 41 U.S.C. 35 *et seq.;* Service Contract Act of 1965, 41 U.S.C. 351 *et seq.;* Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333; Sec. 41, Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 941; National Foundation of Arts and Humanities Act, 20 U.S.C. 951 *et seq.;* Secretary of Labor's Order No. 6–96 (62 FR 111).

* * * * *

33. In § 1918.1, revise the Note to paragraph (b)(7) to read as follows:

§ 1918.1 Scope and application.

* * * * *

(b) * * *

(7) * * *

Note to paragraph (b)(7): Exposures to nonionizing radiation emissions from commercial vessel radar transmitters are considered hazardous under the following situations: (a) Where the radar is transmitting, the scanner is stationary, and the exposure distance is 19 feet (5.79 m) or less; or (b) where the radar is transmitting, the scanner is rotating, and the exposure distance is 5 feet (1.52 m.) or less.

* * * * *

34. In § 1918.2 revise the definitions for *Dockboards* (car and bridge plates) and *Fall hazard,* and add the following new definition for *Ro-Ro operations* in alphabetical order to read as follows:

§ 1918.2 Definitions.

* * * * *

Dockboards (car and bridge plates) mean devices for spanning short distances between, for example, two barges, that is not higher than four feet (1.22m) above the water or next lower level.

* * * * *

Fall hazard means the following situations:

(1) Whenever employees are working within three feet (.91 m) of the unprotected edge of a work surface that is 8 feet or more (2.44 m) above the adjoining surface and twelve inches (.3 m) or more, horizontally, from the adjacent surface; or

(2) Whenever weather conditions may impair the vision or sound footing of employees working on top of containers.

* * * * *

Ro-Ro operations are those cargo handling and related operations, such as lashing, that occur on Ro-Ro vessels, which are vessels whose cargo is driven on or off the vessel by way of ramps and moved within the vessel by way of ramps and/or elevators.

* * * * *

35–36. In § 1918.24, revise paragraphs (d), (f)(4), (h)(1), (h)(2), and (h)(3) to read as follows:

§ 1918.24 Fixed and portable ladders.

* * * * *

(d) For vessels built after July 16, 2001, when six inches (15.24 cm) or more clearance does not exist behind the rungs of a fixed ladder, the ladder shall be deemed ''unsafe'' for the purposes of this section. Alternate means of access (for example, a portable ladder) must be used.

* * * * *

(f) * * *

(4) Width between side rails at the base of the ladder shall be at least 12 inches (30.48 cm) for ladders 10 feet (3.05 m) or less in overall length, and shall increase at least one-fourth inch (0.64 cm) for each additional two feet (0.61 m) of ladder length.

* * * * *

(h) * * *

(1) Have a uniform distance between rungs of at least 12 inches (30.48cm) center to center;

(2) Be capable of supporting a 250-pound (1,112 N) load without deformation; and

(3) Have a minimum width between side rails of 12 inches (30.48 cm) for ladders 10 feet (3.05 m) or less in height. Width between rails shall increase at least one-fourth inch (0.64 cm) for each additional two feet (0.61 m) of ladder length.

* * * * *

37. In § 1918.25, revise paragraph (b)(2) to read as follows:

§ 1918.25 Bridge plates and ramps (See also § 1918.86).

* * * * *

(b) * * *

(2) Be equipped with a railing meeting the requirements of § 1918.21(b), if the slope is more than 20 degrees to the horizontal or if employees could fall more than four feet (1.22 m);

* * * * *

38. In § 1918.37, revise paragraph (a) to read as follows:

§ 1918.37 Barges.

(a) Walking shall be prohibited along the sides of covered lighters or barges with coamings or cargo more than five feet (1.52 m) high unless a three-foot (.91 m) clear walkway or a grab rail or taut handline is provided.

* * * * *

39. In § 1918.41, revise paragraph (a) to read as follows:

§ 1918.41 Coaming clearances.

(a) *Weather decks.* If a deck load (such as lumber or other smooth sided deck cargo) more than five feet (1.52 m) high is stowed within three feet (.91 m) of the hatch coaming and employees handling hatch beams and hatch covers are not protected by a coaming at least 24-inch (.61 m) high, a taut handline shall be provided along the side of the deckload. The requirements of § 1918.35 are not intended to apply in this situation.

* * * * *

40. In § 1918.42, revise paragraphs (b) and (d) to read as follows:

§ 1918.42 Hatch beam and pontoon bridles.

* * * * *

(b) Bridles for lifting hatch beams shall be equipped with toggles, shackles, or hooks, or other devices of such design that they cannot become accidentally dislodged from the hatch beams with which they are used. Hooks other than those described in this section may be used only when they are hooked into the standing part of the bridle. Toggles, when used, shall be at least one inch (2.54 cm) longer than twice the largest diameter of the holes into which they are placed.

* * * * *

(d) At least two legs of all strongback and pontoon bridles shall be equipped with a lanyard at least eight feet (2.44 m) long and in good condition. The bridle end of the lanyard shall be of chain or wire.

41. In § 1918.43, revise paragraph (d) to read as follows:

§ 1918.43 Handling hatch beams and covers.

* * * * *

(d) Hatch covers unshipped in an intermediate deck shall be placed at least three feet (.91 m) from the coaming or they shall be removed to another deck. Strongbacks unshipped in an intermediate deck shall not be placed closer than six inches (15.24 cm) from the coaming and, if placed closer than three feet (.91 m), shall be secured so that they cannot be tipped or dragged into a lower compartment. If such placement or securement is not possible, strongbacks shall be removed to another deck.

* * * * *

42. In § 1918.51, revise paragraphs (d)(3) and (f) to read as follows:

§ 1918.51 General requirements (See also § 1918.11 and appendix III of this part).

* * * * *

(d) * * *

(3) Wire rope and wire rope slings exhibiting any of the defects or conditions specified in § 1918.62(b)(3)(i) through (vi) shall not be used.

* * * * *

(f) Synthetic web slings exhibiting any of the defects or conditions specified in § 1918.62(g)(2)(i) through (vi) shall not be used.

* * * * *

43. In § 1918.52, revise paragraphs (d) and (f) to read as follows:

§ 1918.52 Specific requirements.

* * * * *

(d) *Heel blocks.* (1) When an employee works in the bight formed by the heel block, a preventer at least three-quarters of an inch (1.91 cm) in diameter wire rope shall be securely rigged, or equally effective means shall be taken, to hold the block and fall if the heel block attachments fail. Where physical limitations prohibit the fitting of a wire rope preventer of the required size, two turns of a one-half inch (1.27 cm) diameter wire rope shall be sufficient.

(2) If the heel block is not so rigged as to prevent its falling when not under strain, it shall be secured to prevent alternate raising and dropping of the block. This requirement shall not apply when the heel block is at least 10 feet (3.05 m) above the deck when at its lowest point.

* * * * *

(f) *Cargo hooks.* Cargo hooks shall be as close to the junction of the falls as the

assembly permits, but never farther than two feet (.61 m) from it. Exception: This provision shall not apply when the construction of the vessel and the operation in progress are such that fall angles are less than 120 degrees. Overhaul chains shall not be shortened by bolting or knotting.

44. In § 1918.54, revise paragraph (f) to read as follows:

§ 1918.54 Rigging gear.

* * * * *

(f) *Bull wire.* (1) Where a bull wire is taken to a winch head for lowering or topping a boom, the bull wire shall be secured to the winch head by shackle or other equally strong method. Securing by fiber rope fastening does not meet this requirement.

(2) When, in lowering or topping a boom, it is not possible to secure the bull wire to the winch head, or when the topping lift itself is taken to the winch head, at least five turns of wire shall be used.

* * * * *

45. In § 1918.61, revise paragraphs (b)(2), (f), and (h) to read as follows:

§ 1918.61 General (See also appendix IV of this part).

* * * * *

(b) *Safe working load.* * * *

(2) All cargo handling gear provided by the employer with a safe working load greater than five short tons (10,000 lbs. or 4.54 metric tons) shall have its safe working load plainly marked on it.

* * * * *

(f) *Special gear.* (1) Special stevedoring gear provided by the employer, the strength of which depends upon components other than commonly used stock items such as shackles, ropes, or chains, and that has a Safe Working Load (SWL) greater than five short tons (10,000 lbs or 4.54 metric tons) shall be inspected and tested as a unit before initial use (see Table A in paragraph (f)(2) of this section). In addition, any special stevedoring gear that suffers damage necessitating structural repair shall be inspected and retested after repair and before being returned to service.

(2) Special stevedoring gear provided by the employer that has a SWL of five short tons (10,000 lbs. or 4.54 metric tons) or less shall be inspected and tested as a unit before initial use according to paragraphs (d) and (e) of this section or by a designated person (see Table A in this paragraph (f)(2)).

Safe working load	Proof load
Up to 20 short tons (18.1 metric tons).	25 percent in excess.
From 20 through 50 short tons (18.1 to 45.4 metric tons).	5 short tons in excess
Over 50 short tons (45.4 metric tons).	10 percent in excess

* * * * *

(h) All cargo handling gear covered by this section with a SWL greater than five short tons (10,000 lbs. or 4.54 metric tons) shall be proof load tested according to Table A in paragraph (f) or paragraph (g), as applicable, of this section every four years and in accordance with paragraphs (d) and (e) of this section or by a designated person.

* * * * *

46. In § 1918.62, revise the Note to paragraph (a), paragraph (d)(3) and paragraphs (i)(2) and (j)(1) to read as follows:

§ 1918.62 Miscellaneous auxiliary gear.

(a) * * *

Note to paragraph (a): When manufacturers' specifications are not available to determine whether gear is defective, the employer shall use the appropriate paragraphs of this section to make these determinations.

* * * * *

(d) * * *

(3)(i) Unless otherwise recommended by the manufacturer, when synthetic fiber ropes are substituted for fiber ropes of less than three inches (7.62 cm) in circumference, the substitute shall be of equal size. Where substituted for fiber rope of three inches or more in circumference, the size of the synthetic rope shall be determined from the formula:

$$C = \pm\sqrt{0.6C_s^{\,2} + 0.4C_m^{\,2}}$$

Where C = the required circumference of the synthetic rope in inches, Cs= the circumference to the nearest one-quarter inch of a synthetic rope having a breaking strength not less than that of the size fiber rope that is required by paragraph (c) of this section and Cm=the circumference of the fiber rope in inches that is required by paragraph (c) of this section.

(ii) In making such substitution, it shall be ascertained that the inherent characteristics of the synthetic fiber are suitable for hoisting.

* * * * *

(i) * * *

(2) Screw pin shackles provided by the employer and used aloft, except in cargo hook assemblies, shall have their pins positively secured.

(j) *Hooks other than hand hooks.* (1) The manufacturer's recommended safe working loads for hooks shall not be exceeded. Hooks other than hand hooks shall be tested before initial use in accordance with the provisions of § 1919.31 (a), (c), and (d) of this chapter. *Exception:* Manufacturers' test certificates indicating performance to the criteria in § 1919.31 (a), (c) and (d) of this chapter shall be acceptable.

* * * * *

47. In § 1918.65, revise paragraph (c)(2) to read as follows:

§ 1918.65 Mechanically powered vehicles used aboard vessels.

* * * * *

(c) * * *

(2) Overhead guards shall not obstruct the operator's view, and openings in the top of the guard shall not exceed six inches (15.24 cm) in one of the two directions, width or length. Larger openings are permitted if no opening allows the smallest unit of cargo being handled through the guard.

* * * * *

48. In § 1918.66, remove ''or'' at the end of paragraph (a)(14)(iii)(A), remove the period at the end of paragraph (a)(14)(iii)(B) and add ''; or'' in its place, add a new paragraph (a)(14)(iii)(C), and revise the Note to paragraph (f)(1)(vi) to read as follows:

§ 1918.66 Cranes and derricks other than vessel's gear.

(a) * * *

(14) * * *

(iii) * * *

(C) 100 percent when two holding brakes are provided.

* * * * *

(f) * * *

(1) * * *

(iv) * * *

Note to paragraph (f)(1)(vi): If the accuracy of the load indicating device is based on full scale loads and the device is arbitrarily set at plus or minus 10 percent, it would accept a reading between 90,000 and 110,000 lbs. at full capacity for a machine with a maximum rating of 100,000 lbs. but would also show a reading of between zero and 20,000 lbs. at that outreach (radius) at which the load would be 10,000 lbs.; this is clearly unacceptable. If, however, the accuracy of the device is based on actual applied loads under the same conditions, the acceptable range would remain the same with the 100,000-lb. load but would show a figure between 9,000 and 11,000 lbs. at the 10,000-lb. load; this is an acceptable reading.

* * * * *

49. In § 1918.69, revise paragraph (b)(1) to read as follows:

§ 1918.69 Tools.

* * * * *

(b) Portable electric tools. (1) Portable hand-held electric tools shall be equipped with switches of a type that must be manually held in a closed position in order to operate the tool.

* * * * *

50. In § 1918.85, revise the introductory text of paragraph (f) and paragraphs (f)(1)(i)(F) and (f)(1)(ii) to read as follows:

§ 1918.85 Containerized cargo operations.

* * * * *

(f) *Lifting fittings.* Containers shall be handled using lifting fittings or other arrangements suitable and intended for the purpose as set forth in paragraphs (f)(1) and (f)(2) of this section, unless damage to an intermodal container makes special means of handling necessary.

(1) * * *

(i) * * *

(F) The length of the spreader beam is at least 16.3 feet (5 m) for a 20-foot container, and at least 36.4 feet (11.1 m) for a 40-foot container.

(ii) When hoisting containers from bottom fittings, the hoisting connections shall bear on the fittings only, making no other contact with the container. The angles of the four bridle legs shall not be less than 30 degrees to the horizontal for 40-foot (12.19 m) containers; 37 degrees for 30-foot (9.14 m) containers; and 45 degrees for 20-foot (6.1 m) containers.

* * * * *

51. In § 1918.86, revise the section heading, remove and reserve footnote 9, and revise paragraph (c), and the Note to paragraph (m) to read as follows:

§ 1918.86 Roll-on roll-off (Ro-Ro) operations (see also § 1918.2, Ro-Ro operations, and § 1918.25).

* * * * *

(c) *Pedestrian traffic.* Bow, stern, and side port ramps also used for pedestrian access shall meet the requirements of § 1918.25. Such ramps shall provide a physical separation between pedestrian and vehicular routes. When the design of the ramp prevents physical separation, a positive means shall be established to prevent simultaneous use of the ramp by vehicles and pedestrians.

* * * * *

(m) *Authorized personnel.* * * *

Note To Paragraph (m): High visibility vests or equivalent protection means high visibility/retro-reflective materials which are intended to make the user clearly visible by day through the use of high visibility (fluorescent) material and in the dark by vehicle headlights through the use of retro-reflective material. For example, an acceptable area of material for a vest or equivalent protection is .5 m^2 (760 $in.^2$) for fluorescent (background) material and .13m^2 (197 $in.^2$) for retro-reflective material. Vests or equivalent protection, such as high visibility/retro-reflective coveralls, that are available for industrial use, may also be acceptable.

* * * * *

52. In § 1918.94, revise the section heading and remove and reserve footnote 12 in to paragraph (a)(1)(i) to read as follows:

§ 1918.94 Ventilation and atmospheric conditions (See also § 1918.2, definitions of Hazardous cargo, materials, substance or atmosphere and Ro-Ro operations).

* * * * *

53. In 1918.97, revise paragraph (e) to read as follows:

§ 1918.97 First aid and lifesaving facilities. (See appendix V of this part).

* * * * *

(e) *Life-rings.* (1) The employer shall ensure that there is in the vicinity of each vessel being worked at least one U.S. Coast Guard approved 30-inch (76.2 cm) life-ring with no less than 90 feet (27.43 m) of line attached, and at least one portable or permanent ladder that will reach from the top of the apron to the surface of the water.

(2) In addition, when working a barge, scow, raft, lighter, log boom, or carfloat alongside a ship, a U.S. Coast Guard approved 30-inch (76.2 cm) life-ring, with no less than 90 feet (27.43 m) of line shall be provided either on the floating unit itself or aboard the ship in the immediate vicinity of each floating unit being worked.

* * * * *

54. In § 1918.98, revise the Note to paragraph (a)(2) to read as follows:

§ 1918.98 Qualifications of machinery operators and supervisory training.

(a) * * *

(2) * * *

Note to paragraph (a)(2): OSHA is defining suddenly incapacitating medical ailments consistent with the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 (1990). Therefore, employers who act in accordance with the employment provisions (Title I) of the ADA (42 U.S.C. 12111–12117), the regulations implementing Title I (29 CFR Part 1630), and the Technical Assistance Manual for Title I issued by the Equal Employment Opportunity Commission (Publication number: EEOC–M1A), will be considered as being in compliance with this paragraph.

* * * * *

55. In § 1918.100, revise paragraph (a) and footnote 14 to read as follows:

§ 1918.100 Emergency action plans.

(a) *Scope and application.* This section requires all employers to develop and implement an emergency action plan.[14] The emergency action plan shall be in writing (except as provided in the last sentence of paragraph (e)(3) of this section) and shall cover those designated actions employers and employees must take to ensure employee safety from fire and other emergencies.

* * * * *

56. Revise § 1918.102 to read as follows:

§ 1918.102 Respiratory protection. (See § 1918.1(b)(8)).

57. In § 1918.105, revise paragraph (b)(2) to read as follows:

§ 1918.105 Other protective measures.

* * * * *

(b) * * *

(2) PFDs (life preservers, life jackets, or work vests) worn by each affected employee must be United States Coast Guard (USCG) approved pursuant to 46 CFR part 160 (Type I, II, III, or V PFD) and marked for use as a work vest, for commercial use, or for use on vessels.

* * * * *

58. In Part 1918, revise Table 1, Table 2, Table 4A, Table 4B, Table 5, and the three Wire Rope Tables in Appendix II to read as follows:

Appendix II to Part 1918—Tables for Selected Miscellaneous Auxiliary Gear (Mandatory)

* * * * *

[14] When an employer directs his employees to respond to an emergency that is beyond the scope of the Emergency Action Plan, a plan developed in accordance with § 1910.120(q) of this chapter shall apply.

TABLE 1.—WIRE ROPE CLIPS

Improved plow steel, rope (Inches (cm))	Minimum number of clips		Minimum spacing (Inches (cm))
	Drop forged	Other material	
½ or less (1.3)	3	4	3 (7.6)
⅝ (1.6)	3	4	3¾ (9.5)
¾ (1.9)	4	5	4½ (11.4)
⅞ (2.2)	4	5	5¼ (13.3)
1 (2.5)	5	6	6 (15.2)
1⅛ (2.9)	6	6	6¾ (17.1)
1¼ (3.2)	6	7	7½ (19.1)
1⅜ (3.5)	7	7	8¼ (21.0)
1½ (3.8)	7	8	9 (22.9)

TABLE 2.—NATURAL FIBER ROPE AND ROPE SLINGS—LOAD CAPACITY IN POUNDS (LBS.) SAFETY FACTOR=5—EYE AND EYE SLING—BASKET HITCH

[Angle of rope to horizontal—90 deg. 60 deg. 45 deg. 30 deg.]

Rope diameter nominal inch	Vertical hitch	Choker hitch	Angle of rope to vertical			
			0 deg.	30 deg.	45 deg.	60 deg.
½	550	250	1,100	900	750	550
9/16	700	350	1,400	1,200	1,000	700
⅝	900	450	1,800	1,500	1,200	900
¾	1,100	550	2,200	1,900	1,500	1,100
13/16	1,300	650	2,600	2,300	1,800	1,300
⅞	1,500	750	3,100	2,700	2,200	1,500
1	1,800	900	3,600	3,100	2,600	1,800
1 1/16	2,100	1,100	4,200	3,600	3,000	2,100
1⅛	2,400	1,200	4,800	4,200	3,400	2,400
1¼	2,700	1,400	5,400	4,700	3,800	2,700
1 5/16	3,000	1,500	6,000	5,200	4,300	3,000
1½	3,700	1,850	7,400	6,400	5,200	3,700
1⅝	4,500	2,300	9,000	7,800	6,400	4,500
1¾	5,300	2,700	10,500	9,200	7,500	5,300
2	6,200	3,100	12,500	10,500	8,800	6,200
2⅛	7,200	3,600	14,500	12,500	10,000	7,200
2¼	8,200	4,100	16,500	14,000	11,500	8,200
2½	9,300	4,700	18,500	16,000	13,000	9,300
2⅝	10,500	5,200	21,000	18,000	14,500	10,500
Endless Sling						
½	950	500	1,900	1,700	1,400	950
9/16	1,200	600	2,500	2,200	1,800	1,200
⅝	1,600	800	3,200	2,700	2,200	1,600
¾	2,000	950	3,900	3,400	2,800	2,000
13/16	2,300	1,200	4,700	4,100	3,300	2,300
⅞	2,800	1,400	5,600	4,800	3,900	2,800
1	3,200	1,600	6,500	5,600	4,600	3,200
1 1/16	3,800	1,900	7,600	6,600	5,400	3,800
1⅛	4,300	2,200	8,600	7,500	6,100	4,300
1¼	4,900	2,400	9,700	8,400	6,900	4,900
1 5/16	5,400	2,700	11,000	9,400	7,700	5,400
1½	6,700	3,300	13,500	11,500	9,400	6,700
1⅝	8,100	4,100	16,000	14,000	11,500	8,100
1¾	9,500	4,800	19,000	16,500	13,500	9,500
2	11,000	5,600	22,500	19,500	16,000	11,000
2⅛	13,000	6,500	26,000	22,500	18,500	13,000
2¼	15,000	7,400	29,500	25,500	21,000	15,000
2½	16,500	8,400	33,500	29,000	23,500	16,500
2⅝	18,500	9,500	37,000	32,500	26,500	18,500

* * * * *

TABLE 4A.—RATED LOAD FOR GRADE 80 ALLOY STEEL CHAIN SLINGS[1] (CHAIN PER NACM)

Chain size nominal		Single leg sling-90 deg. to horizontal loading		Rated load double leg sling horizontal angle (note 2)					
				60 deg. Double at 60 deg.		45 deg. Double at 45 deg.		30 deg. Double at 30 deg.	
inch	mm	lb	kg	lb	kg	lb	kg	lb	kg
¼	7	3,500	1,570	6,100	2,700	4,900	2,200	3,500	1,590
⅜	10	7,100	3,200	12,300	5,500	10,000	4,500	7,100	3,200
½	13	12,000	5,400	20,800	9,400	17,000	7,600	1,200	5,400
⅝	16	18,100	8,200	31,300	14,200	25,600	11,600	18,100	8,200
¾	20	28,300	12,800	49,000	22,300	40,000	18,200	28,300	12,900
⅞	22	34,200	15,500	59,200	27,200	48,400	22,200	34,200	15,700
1	26	47,700	21,600	82,600	37,900	67,400	31,000	47,700	21,900
1¼	32	72,300	32,800	125,200	56,800	102,200	46,400	72,300	32,800

Notes:
(1) Other grades of proof tested steel chain include Proof Coil (Grade 28), Hi-Test (grade 43 Chain, and Transport (grade 70) Chain. These grades are not recommended for overhead lifting and therefore are not covered by this standard.
(2) Rating of multi-leg slings adjusted for angle of loading between the inclined leg and the horizontal plane of the load.

TABLE 4B.—MAXIMUM ALLOWABLE WEAR AT ANY POINT OF LINK

Nominal chain or coupling link size		Maximum allowable wear of cross-sectional diameter, in.
inch	mm	
¼	7	0.037
⅜	10	0.052
½	13	0.060
⅝	16	0.084
¾	20	0.105
⅞	22	0.116
1	26	0.137
1¼	32	0.169

Note: For other sizes, consult chain or sling manufacturer.

TABLE 5.—SAFE WORKING LOADS FOR SHACKLES

[In tons of 2,000 pounds]

Material size		Pin diameter		Safe working load in 2,000 lb tons
Inches	(cm)	Inches	(cm)	
½	(1.3)	⅝	(1.6)	1.4
⅝	(1.6)	¾	(1.9)	2.2
¾	(1.9)	⅞	(2.2)	3.2
⅞	(2.2)	1	(2.5)	4.3
1	(2.5)	1⅛	(2.9)	5.6
1⅛	(2.9)	1¼	(3.2)	6.7
1¼	(3.2)	1⅜	(3.5)	8.2
1⅜	(3.5)	1½	(3.8)	10.0
1½	(3.8)	1⅝	(4.1)	11.9
1¾	(4.4)	2	(5.1)	16.2
2	(5.1)	2¼	(5.7)	21.2

WIRE ROPE TABLE—RATE LOADS FOR SINGLE LEG SLINGS 6X19 OR 6X37 CLASSIFICATION IMPROVED PLOW STEEL GRADE ROPE WITH FIBER CORE (FC)

[Rated loads [note 1], tons (2,000 lb)]

Vertical				Choker
Rope diameter, inch	HT	MS	S	HT, MS&S
¼	0.49	0.51	0.55	0.38
5/16	0.78	0.79	0.85	0.6
⅜	1.1	1.1	1.2	0.85
7/16	1.4	1.5	1.7	1.2
½	1.8	2.0	2.1	1.5
9/16	2.3	2.5	2.7	1.9
⅝	2.8	3.1	3.3	2.3
¾	3.9	4.4	4.8	3.3

WIRE ROPE TABLE—RATE LOADS FOR SINGLE LEG SLINGS 6X19 OR 6X37 CLASSIFICATION IMPROVED PLOW STEEL GRADE ROPE WITH FIBER CORE (FC)—Continued

[Rated loads [note 1], tons (2,000 lb)]

Vertical				Choker
Rope diameter, inch	HT	MS	S	HT, MS&S
7/8	5.2	6.0	6.4	4.5
1	6.7	7.7	4.8	5.9
1 1/8	8.4	9.5	11	7.4
1 1/4	10	12	13	9.0
1 3/8	12	14	15	11
1 1/2	15	17	18	13
1 5/8	17	19	21	15
1 3/4	20	22	25	17
2	26	29	32	22

HT=Hand Tucked Splice.
For Hidden Tuck Splice (IWRC), use vales in HT (FC) columns.
MS=Mechanical Splice.
S=Poured Socket or Swaged Socket.
Note: (1) These values are based on slings being vertical. If they are not vertical, the rated load shall be reduced. If two or more slings are used, the minimum horizontal angle between the slings shall also be considered.

WIRE ROPE TABLE—RATED LOADS FOR SINGLE LEG SLINGS 6X19 OR 6X37 CLASSIFICATION EXTRA IMPROVED PLOW STEEL GRADE ROPE WITH INDEPENDENT WIRE ROPE CORE (IWRC)

[Rated loads [note 1] , tons (2,000 lb)]

Vertical				Choker	Vertical basket	
Rope diameter, inch	HT	MS	S	HT, MS&S	[Note (2)] HT	[Note (3)] MS&S
1/4	0.53	0.59	0.59	0.31	1.1	1.1
5/16	0.82	0.87	0.92	0.64	1.6	1.7
3/8	1.2	1.2	1.3	0.92	2.3	2.5
7/16	1.5	1.7	1.8	1.2	3.1	3.4
1/2	2.0	2.2	2.3	1.6	4.0	4.4
9/16	2.5	2.8	2.9	2.0	1.9	5.5
5/8	3.0	3.4	3.6	2.6	6.0	6.8
3/4	4.2	4.9	5.1	3.6	8.4	9.7
7/8	5.5	6.6	6.9	4.8	11	13
1	7.2	8.5	9.0	6.3	14	17
1 1/8	9.0	10	11	7.9	18	20
1 1/4	11	13	14	9.7	22	26
1 3/8	13	15	17	12	27	31
1 1/2	16	18	20	14	32	37
1 5/8	18	21	23	16	37	43
1 3/4	21	25	27	19	43	49
2	28	32	34	24	55	64

HT=Hand tucked Splice
For Hidden Tuck Splice (IWRC), use values in HT columns of Table 3.
MS=Mechanical Splice. S=Poured Socket or Swaged Socket.
Notes:
(1) These values are based on slings being vertical. If they are not vertical, the rated load shall be reduced. If they are not vertical, the rated load shall be reduced. If two or more slings are used, the minimum horizontal angle between the slings shall also be considered.
(2) These values only apply when the D/d ratio is 15 or greater.
(3) These values only apply when the D/d ratio is 25 or greater.
D=Diameter or curvature around which the body of the sling is bent. d=Diameter of rope.

WIRE ROPE TABLE-RATED LOADS FOR SINGLE LEG SLINGS 6X19 OR 6X37 CLASSIFICATION EXTRA IMPROVED PLOW STEEL GRADE ROPE WITH INDEPENDENT WIRE ROPE CORE (IWRC)

[Rated loads [note 1], tons (2,000 lb)]

Vertical			Choker	Vertical basket [note (2)]
Rope diameter	MS	S	MS&S	MS&S
1/4	0.65	0.68	0.48	1.3
5/16	1.0	1.1	.074	2.0
3/8	1.4	1.5	1.1	2.9
7/16	1.9	2.0	1.4	3.9
1/2	2.5	2.7	1.9	5.1
9/16	3.2	3.4	2.4	6.4
5/8	3.9	4.1	2.9	7.8

WIRE ROPE TABLE-RATED LOADS FOR SINGLE LEG SLINGS 6X19 OR 6X37 CLASSIFICATION EXTRA IMPROVED PLOW STEEL GRADE ROPE WITH INDEPENDENT WIRE ROPE CORE (IWRC)—Continued

[Rated loads [note 1], tons (2,000 lb)]

Vertical			Choker	Vertical basket [note (2)]
Rope diameter	MS	S	MS&S	MS&S
¾	5.6	5.9	4.1	11
⅞	7.6	8.0	5.6	15
1	9.8	10	7.2	20
1⅛	12	13	9.1	24
1¼	15	16	11	30
1⅜	18	19	13	36
1½	21	23	16	42
1⅝	24	26	18	49
1¾	28	31	21	57
2	37	40	28	73

HT=Hand tucked Splice
For Hidden Tuck Splice (IWRC), use values in HT columns of Table 3.
MS=Mechanical Splice.
S=Poured Socket or Swaged Socket.
NOTE: (1) These values are based on slings being vertical. If they are not vertical, the rated load shall be reduced. If they are not vertical, the rated load shall be reduced. If two or more slings are used, the minimum horizontal angle between the slings shall also be considered.
(2) These values only apply when the D/d ratio is 25 or greater.

59. In Part 1918, revise Appendix IV to read as follows:

Appendix IV to Part 1918—Special Cargo Gear and Container Spreader Test Requirements (Mandatory) [see § 1918.61 (f), (g), (h)]

Type gear	Test requirement	Tested by	Proof test	
A. All Special Cargo Handling Gear Purchased or Manufactured on or After January 21, 1998				
1. Safe Working Load—greater than 5 short tons (10,000 lbs./4.5 metric tons).	Prior to initial use	OSHA accredited agency only	Up to 20 short tons	125% SWL.
	Prior to reuse after structural damage repair.		From 20 to 50 short tons.	5 short tons in excess of SWL.
	Every four years after initial proof load test.	OSHA accredited agency or designated person.	Over 50 short tons	110% SWL.
2. Safe Working Load—5 short tons or less.	Prior to initial use	OSHA accredited agency or designated person.	125% SWL.	
	Prior to reuse after structural damage repair.			
3. Intermodal container spreaders not part of vessel's cargo handling gear.	Prior to initial use	OSHA accredited agency only	125% SWL.	
	Prior to reuse after structural damage repair.			
	Every four years after initial proof load test.	OSHA accredited agency or designated person.		
B. All Special Cargo Handling Gear in Use Prior to January 21, 1998 and Proof Load Tested Prior to Initial Use (See Note Below)				
1. Safe Working Load—greater than 5 short tons (10,000 lbs./4540 kg.).	Every four years starting on January 21, 1998.	OSHA accredited agency or designated person.	Up to 20 short tons	125% SWL.
	Prior to reuse after structural damage repair.	OSHA accredited agency	From 20 to 50 short tons.	5 short tons in excess of SWL.
			Over 50 short tons	110% SWL.
2. Safe Working Load—5 short tons or less.	Prior to reuse after structural damage repair.	OSHA accredited agency or designated person.	125% SWL.	
3. Intermodal container spreaders not part of vessel's cargo handling gear.	Every four years starting on January 21, 1998.	OSHA accredited agency or designated person.	125% SWL.	
	Prior to reuse after structural damage repair.	OSHA accredited agency.		

Note to Appendix IV: Special stevedoring gear in use prior to January 21, 1998 was covered by § 1918.61(b), in effect prior to January 21, 1998. (See 29 CFR Parts 1911 to 1925 revised as of July 1, 1997). The assumption is made that gear in use prior to January 21, 1998, has already been proof load tested, although not necessarily by an accredited agency. However, if the employer cannot certify that such gear was proof load tested under § 1918.61(b), in effect prior to January 21, 1998, (See 29 CFR Parts 1911 to 1925 revised as of July 1, 1997), than it must be proof load tested in accordance with § 1918.61 in effect on January 21, 1998, (See 29 CFR Parts 1911 to 1925 revised as of July 1, 1998.)

* * * * *

PART 1919—GEAR CERTIFICATION

60. The authority citation for part 1919 continues to read as follows:

Authority: Sec.41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Secs. 4, 6, 8, Occupational safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033); as applicable; 29 CFR 1911.

61. In § 1919.1, revise paragraphs (a) and (b)(2) to read as follows:

§ 1919.1 Purpose and scope.

(a) The regulations in this Part implement §§ 1915.115, 1917.50 and 1918.11 of this chapter. They provide procedures and standards governing accreditation of persons by the Occupational Safety and Health Administration, U.S. Department of Labor, for the purpose of certificating vessels' cargo gear and shore-based material handling devices, and the manner in which such certification shall be performed.

(b) * * *

(2) When cargo gear certification is performed for shore-based material handling devices under standards established and enforced by the States wherein the devices are located, or by political subdivisions delegated this responsibility by the States, provided such standards meet the requirements of § 1917.50(b)(2) of this chapter.

* * * * *

62. In § 1919.50, revise the section heading to read as follows:

§ 1919.50 Eligibility for accreditation to certificate shore-based material handling devices covered by § 1917.50 of this chapter, safety and health regulations for marine terminals.

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[FR Doc. 00–16545 Filed 6–29–00; 8:45 am]

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Federal Register

Friday,
June 30, 2000

Part X

Department of the Interior

Bureau of Land Management

43 CFR Part 2560

Alaska Native Veterans Allotments; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 2560

[WO–350–1410–00–24 1A]

RIN 1004–AD34

Alaska Native Veterans Allotments

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is issuing final regulations to allow certain Alaska Native veterans another opportunity to apply for a Native allotment under the repealed Native Allotment Act of 1906. Congress passed the Alaska Native Veterans Allotment Act in 1998 which mandates regulations to implement it. This action will enable certain Alaska Native veterans who, because of their military service, were not able to apply for an allotment during the early 1970s, to do so now.

EFFECTIVE DATE: July 31, 2000.

ADDRESSES: You may send inquiries or suggestions to: Director (630), Bureau of Land Management, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Connie Van Horn, Division of Conveyance Management, Bureau of Land Management, 222 West Seventh Avenue, 13, Anchorage, Alaska 99513–7599; telephone (907) 271–3767; or Frank Bruno, Bureau of Land Management, Regulatory Affairs Group (WO–630), Mail Stop 401, 1620 L Street, NW, Washington, DC 20036; telephone (202) 452–0352. To reach Ms. Van Horn or Mr. Bruno, individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339, 24 hours a day, seven days a week.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Final Rule as Adopted.
III. Responses to Comments.
IV. Procedural Matters.

I. Background

What Has BLM Done Since the Proposed Rule Was Published in February?

Since the proposed rule was published in the February 8, 2000, **Federal Register** (65 FR 6259), BLM has been receiving and analyzing public comments, and preparing this final rule. The final rule published today is the last stage of the rulemaking process that will result in the amendment of 43 CFR part 2560 to add subpart 2568, ''Alaska Native Allotments for Certain Veterans.''

What Was the Process for Public Comments?

BLM invited public comment for 60 days and received written comments from 65 individuals and groups. In addition, the agency held public meetings in five Alaska cities (Anchorage, Juneau, Fairbanks, Bethel, and Nome) during the publication period to give participants an opportunity to express their views about the proposed rule. The primary purpose of these meetings was to gather input from Native entities, in keeping with the requirement in Public Law 105–276 that the Secretary of the Interior promulgate regulations ''after consultation with Alaska Natives groups.'' All the meetings were open to the public and were advertised in local newspapers. Participants included both Native and non-Native individuals. Oral comments were recorded in writing at each meeting; notes of the meetings, as well as all written comments submitted to BLM at the meetings, are included in the administrative record for this rule.

Most written comments we received during the 60-day comment period addressed more than one section of the proposed rule. Comments are addressed on a section-by-section basis in the Response to Comments section.

Why Was the Proposed Rule Published?

The Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA; 43 U.S.C. 1601 *et seq.*) repealed the Native Allotment Act of 1906 (34 Stat. 196, as amended, 42 Stat. 415 and 70 Stat. 954, 43 U.S.C. 270–1 through 270–3 (1970)) on December 18, 1971. During the time just before the 1906 Act was repealed, certain Alaska Natives who were eligible to apply for allotments were serving in the U.S. military and may have missed their opportunity to apply because of their military service.

Section 432 of Public Law 105–276 (43 U.S.C. 1629g) of October 21, 1998, allows certain Alaska Native veterans a new opportunity to apply for allotments under the 1906 Act as it was in effect before its repeal. Public Law 105–276 amended ANCSA by adding Section 41, requiring the Department of the Interior to create regulations within 18 months to carry it out.

Although Public Law 105–276 authorizes allotments under the 1906 Act as it was in effect before December 18, 1971, this law creates a new right that did not exist between the repeal of the 1906 Act and the enactment of Public Law 105–276. The requirements of the 1906 Act as it existed before December 18, 1971, apply to allotment applicants under Public Law 105–276 but there are different and additional requirements that Congress added for Native veteran allotments applicants.

The final rule implements the provisions of the 1906 Act as they pertain to Native veteran allotments as well as the specific provisions of Public Law 105–276 that are unique to Native veteran allotments.

What is the Best Way To Read This Rulemaking To Understand the New Regulation?

The part you are reading now is called the preamble. It discusses the rule that BLM proposed on February 8, 2000, and the comments we received from the public about the rule. It explains what changes we made in this final rule and why we made them. It also explains why we did not make changes the public suggested.

The ''regulatory text'' is the part that follows the authorization of the rulemaking by the Assistant Secretary of the Interior, and begins with ''SUBPART 2568–ALASKA NATIVE ALLOTMENTS FOR CERTAIN VETERANS.'' This text will become the regulation in the Code of Federal Regulations to implement the Alaska Native Veterans allotment program.

II. Final Rule as Adopted

The final rule is adopted with the changes to the proposed rule discussed in the Responses to Comments section. In summary, the final rule explains how to apply for an Alaska Native veterans allotment and outlines the requirements an applicant must meet to qualify to apply for and receive an allotment. The final rule explains requirements of the Native Allotment Act of 1906 which applicants must meet as well as requirements of Public Law 105–276 that differ from those under the 1906 law and its regulations in 43 CFR Part 2561.

The final rule explains:

1. What types of Federal land can and cannot be conveyed to an allotment applicant,
2. When an applicant may apply for an alternative allotment if the original application describes land that cannot be conveyed,
3. The processing of applications for allotments within Alaska Conservation System Units (CSU's), such as National Parks, Wildlife Refuges, Wild and Scenic Rivers etc.,
4. How a personal representative may apply for an allotment on behalf of the heirs of certain eligible veterans, and
5. The intra-agency appeal process of decisions determining allotments to be inconsistent with the purposes of a CSU.

III. Responses to Comments

In preparing the final rule, BLM carefully analyzed and considered all comments received during the 60-day public comment period, both written comments and oral comments recorded at the five public meetings held throughout Alaska. A discussion of those comments follows. The discussion deals with changes we are making to the final rule resulting from comments we received. We also cover changes urged by the public that we are not making. In both cases we explain the reason(s) for our decision.

Forty-seven of the 65 comments BLM received were about requirements in Public Law 105–276 or in the Native Allotment Act of 1906. Some of these requirements were included in the proposed rule and some were not. In the discussion of the comments we received on specific sections of the proposed rule, we have explained when a requirement in the regulations is also a legal requirement. In these cases, we also explained that BLM does not have authority in its regulations to change the requirements of the law that these regulations are intended to carry out.

The comments most often expressed were about land that BLM cannot convey to Alaska Native veterans, the military service requirements of Public Law 105–276 itself, including eligibility criteria concerning deceased veterans, and the requirement for Alaska Native veterans to meet the same use and occupancy standards as individuals who filed applications under the Native Allotment Act of 1906 before it was repealed in 1971. Public Law 105–276 was very specific about what lands BLM could convey to Alaska Native veterans and what lands it could not convey. The law also required military service during a certain period of time and it placed limitations on the eligibility of deceased veterans.

We are making certain changes to the proposed rule where commenters said the language was not clear or where additional explanation makes a section easier to understand. We are making other changes to make sure the rule is consistent from one section to another and to make sure the meaning of certain terms is clear.

The following is a section-by-section discussion of the comments BLM received, the suggestions we are adopting and why, and the suggestions we are not adopting and the reasons we are not adopting them.

Section 2568.30

Section 2568.30 contains definitions of terms used in the regulations. BLM is adding a new definition in the final rule to clarify the meaning of the terms ''consistent'' and ''inconsistent'' as these terms are applied to the evaluation of allotment applications in CSU's. Public Law 105–276 authorizes the Secretary of the Interior to convey alternative lands to an applicant who qualifies for an allotment in a CSU if the CSU manager determines the allotment is incompatible with a purpose for which the CSU was established. The terms ''compatible'' and ''incompatible'' have very specific meanings under other laws. BLM wants to avoid any possible confusion between the terms used to describe the unique process for evaluating Native veteran allotment applications in CSU's under Public Law 105–276 and other processes followed under other laws. We referred in the proposed rule to allotments determined to be ''consistent'' and ''inconsistent'' with CSU purposes, and we are retaining these terms in the final rule. We also said in proposed section 2568.102 that the process for deciding whether an allotment is inconsistent with a CSU ''should not be confused with any similar process under any other act, including the incompatibility process under the National Wildlife Refuge System Improvement Act of 1997.'' This statement is especially important because in some cases eligible Native veterans will be able to receive allotments of land within National Wildlife Refuges and we want to make sure there is no confusion about the process that BLM will follow for evaluating the applications for those allotments. We are retaining in the final rule the same language we included in the proposed rule for section 2568.102 and including a new definition in section 2568.30.

Section 2568.50

Section 2568.50 contains criteria an applicant must meet to be eligible for an allotment. We are adding two new paragraphs to this section to emphasize two requirements for Alaska Native veterans allotments. A new paragraph (b) clarifies that an applicant has to establish that he or she used land according to the rules that were in effect before December 18, 1971, and that the land is still owned by the Federal government. A new paragraph (f) restates the requirement of the 1906 Act that an Alaska Native veteran has to be a resident of Alaska in order to qualify for an allotment and also states that a deceased veteran had to have been a resident of Alaska at the time of death.

BLM received three comments questioning the Alaska residency requirement for Native veteran allotments. Some Alaska Native veterans who do not now live in Alaska believe it is unfair for veterans to be expected to uproot their families and return to Alaska to be eligible to receive an allotment.

The Native Allotment Act of 1906 said that allotments can only be granted to Alaska Natives who reside in Alaska. The existing Native allotment regulations contain the same residency language as the 1906 Act (43 CFR 2561.0–3). Public Law 105–276 required allotment applicants to comply with the allotment rules that were in effect before December 18, 1971, and those rules included the requirement that an individual had to have been an Alaska resident. BLM has no authority to waive the Alaska residency requirement for Native veterans.

Because we are adding a new paragraph between two existing paragraphs in section 2568.50, we are renumbering the remaining paragraphs of this section in the final rule. Paragraph (b) in the proposed section 2568.50 will be new paragraph (c) in the final rule, paragraph (c) in the proposed rule will be new paragraph (d) in the final rule, paragraph (d) in the proposed rule will be new paragraph (e) in the final rule, and the paragraph concerning the Alaska residency requirement will be new paragraph (f).

Paragraph (b) of the proposed section (new paragraph (c)) stated the military service criteria for Native veterans. BLM received 18 comments objecting to the limitations on time and duration of military service. Public Law 105–276 specified that eligible Native veterans had to have served in the military between January 1, 1969, and December 31, 1971, and that they had to have completed six months' service between January 1, 1969, and June 2, 1971, or enlisted or been drafted after June 2, 1971, but before December 3, 1971. The proposed rule reiterated the military service requirements contained in the law.

The limitation of military service eligibility to the 1969–1971 period was based on the idea that the veterans who may have missed their opportunity to file Native allotment applications, because of their military service, were those who served during the years immediately before the repeal of the 1906 Native Allotment Act. This repeal occurred on December 18, 1971.

The military service requirements in the rule are identical to the requirements in Public Law 105–276. We do not have the authority to change this requirement in the regulations. The final rule, in new paragraph (c) of section 2568.50, contains the same

military service requirements as those stated in Public Law 105–276.

In the proposed rule, paragraph (c) of this section (new paragraph (d)) said that an individual must ''not have already received conveyance or approval of an allotment.'' It qualified this requirement by stating that ''if you received an allotment interest by inheritance, devise, gift, or purchase you are not disqualified from applying.'' BLM received three comments on this statement, suggesting it be rephrased to read ''if you received an allotment interest by inheritance, devise, gift, or purchase you are still qualified to apply.'' BLM assumes these comments reflect a desire that we state in the affirmative rather than the negative, perhaps to make it easier to understand. We are adopting this suggested change in the final rule, with a slight modification of the proposed wording. The statement in parentheses in new paragraph (d) of the final rule, which was paragraph (c) in the proposed rule, will read ''However, if you are otherwise qualified to receive an allotment under the Alaska Native Veterans Allotment Act, you are still qualified even if you received another allotment interest by inheritance, devise, gift, or purchase''.

Sections 2568.60–2568.64

Sections 2568.60 through 2568.64 outline the requirements for a personal representative to file an allotment application on behalf of the estate of a deceased veteran. BLM received nine comments on the limitations on how and when a veteran died. The proposed rule contained the same criteria for eligibility that appeared in Public Law 105–276: a veteran had to have (1) died in combat between 1969 and 1971; (2) died while a prisoner of war between 1969 and 1971; or (3) died later as a result of a service connected wound received during that time. All those who commented said that it should not matter when a veteran died or whether death was connected to military service.

The criteria in the rule for deceased veterans are identical to the criteria in the law itself. BLM cannot change the criteria in the rule to be more expansive than the law allows. From the time of the colonial government until Public Law 105–276 was passed, claims against the government for land were not allowed to be made by deceased persons. Congress was well aware of this total prohibition under the public land laws when it decided to make one small exception for those Alaska Natives who died within a particular period of time as a direct result of combat in the Vietnam War. Congress made this provision of the law for the benefit of a small group of individuals.

One commenter suggested that the requirements for the appointment of a personal representative are burdensome and unnecessary and that a simple affidavit system should be used instead. BLM included the sections in the proposed rule concerning personal representatives because Public Law 105–276 said a personal representative would apply for an allotment on behalf of the estate of an eligible deceased veteran. The law does not allow any method for the estate of a deceased veteran to apply for allotments except through appointment of a personal representative. The same commenter pointed out that the Alaska Probate Code requires probates to be initiated within three years of a person's death. Although BLM is aware of this time limit, we note that there is an exception for determination of heirs.

BLM does not have the authority nor the expertise to determine the heirs of a deceased veteran. It also does not have the authority to choose or appoint personal representatives. Often there will be numerous heirs or persons claiming to be heirs. BLM cannot know which allotment application to process or which parcel of land to convey without a formal determination of the estate representative and the heirs who will benefit. The lack of a formal representative would cause considerable chaos and dramatically slow down the processing of all allotment applications.

We are adding a new provision to section 2568.64 in the final rule. As we said in the discussion of section 2568.50 above, we have decided to restate the Alaska residency requirement of the Native Allotment Act of 1906 as one of the qualifications a Native veteran must meet, and we are also adding a statement that a deceased veteran had to have been a resident of Alaska at the time of death. We are adding this same requirement concerning Alaska residency at the time of death to section 2568.64 in the final rule so that it is included with the other requirements for applications filed on behalf of the estates of deceased veterans.

Section 2568.74

Paragraph 2568.74(a) in the proposed rule required a Native veteran to file a Bureau of Indian Affairs form called a Certificate of Indian Blood (CIB). BLM received one comment suggesting that a tribal card be allowed instead because of the difficulty of obtaining a CIB.

The 1906 Native Allotment Act required that an allotment applicant be an Alaska Native. Under the 1906 Act as it was in effect before December 18, 1971, the Bureau of Indian Affairs certified applications and verified that an applicant had sufficient Native blood to qualify. On the other hand, tribal membership and a tribal card are sometimes granted to those who have no Native blood, so issuance of a tribal card does not prove that a person is an Alaska Native. All Alaska Native veterans must meet the requirements of the 1906 Act, including the requirement that an applicant be an Alaska Native. Because of this, and because a tribal card is unreliable proof of Native blood, we did not change the final rule.

Proposed section 2568.74(c) required an applicant to file a map with the application, and proposed section 2568.74(d) required a legal description of the land. Proposed section 2568.74(d) also stated that the map will control if there is a discrepancy between the map and the legal description. BLM received one comment about situations where there is a discrepancy between the parcel as it is located on the ground and the map or the legal description. We are responding to this comment by adding a sentence to section 2568.74(d) in the final rule to clarify that if there is a discrepancy between the map or the legal description and the parcel as it is located on the ground, the posted location will control.

Section 2568.76

Section 2568.76 does not require a fee to file an application. In the preamble to the proposed rule, we stated that we were not proposing an application filing fee, but we asked for comments on whether we should and whether such a fee should be refunded if an applicant did not receive an allotment. We received seven comments on this issue, all opposing an application filing fee because there was never such a fee under the 1906 Native Allotment Act while it was in effect. The final rule does not include a requirement for a filing fee.

Section 2568.77

Section 2568.77 requires an applicant to post on the ground the land in an allotment application. BLM received five comments on this requirement. One commenter suggested that Native veterans are being asked to meet different requirements from those imposed on 1906 Native Allotment Act applicants. In fact, the existing regulations for 1906 Act allotments do contain a requirement for posting (43 CFR 2561.1(d)), and the application form for 1906 Act allotments requires an applicant to state that he or she has posted the lands described in the application. The same requirement is in

the application form for Native veteran allotments.

Additionally, BLM believes it is essential for an allotment applicant to post the lands for which he or she is applying. Posting puts others on notice of the allotment claim and the specific lands involved, and ensures accurate and efficient examination and survey of the claim. The final rule will contain the same posting requirement as was contained in the proposed rule.

Four of the five comments asked BLM to make allowances in the regulation for weather conditions when assessing compliance with the posting requirement. Although BLM is aware of the difficulties that inclement weather will undoubtedly create for applicants, particularly at certain times of the year, we do not believe the regulation needs to contain language allowing for weather conditions. The regulation states the same requirement that was imposed on 1906 Native Allotment Act applicants.

Section 2568.79

The rule limits the number of allotment parcels that may be conveyed to a Native veteran to two. This is the same limitation stated in Public Law 105–276.

BLM received three comments suggesting that Native veterans should be allowed to choose more than two parcels because applicants under the 1906 Act were able to. BLM's regulations must conform to Public Law 105–276. We have no authority to change the parcel limitation stated in the law.

Section 2568.90

Section 2568.90 identifies the types of land that BLM can convey to Native veterans.

Paragraph 2568.90(a)(1) says a Native veteran can receive title only to land that is currently owned by the Federal government. BLM received three comments suggesting that we allow voluntary title recovery of conveyed land for the benefit of Native veteran applicants. Public Law 105–276 prohibits this because land reconveyed to BLM becomes acquired land, and BLM is prohibited in Public Law 105–276 from conveying acquired land to Native veterans. We added a new section, 2568.95, to the final rule explaining that BLM is prohibited from accepting voluntary title recovery for the benefit of Native veterans.

In this final rule we are correcting proposed 43 CFR 2568.90(a)(3) to state that a Native veteran applicant may receive title only to land that has not been continuously withdrawn since before his or her sixth birthday. Proposed section 2568.90(a)(3) said a Native veteran could only receive title to land that has not been continuously withdrawn since before his or her fifth birthday. We are making a technical correction to this section. BLM has a long-established policy, based on administrative case law, of rejecting Native allotment applications under the 1906 Act without a hearing if the land described in the application has been continuously withdrawn since before the applicants sixth birthday. If, however, the applicant was at least six years old at the time of the withdrawal BLM gives an opportunity for an administrative hearing to determine if he or she meets the use and occupancy requirements of the 1906 Act and its regulations.

We are also making a technical change to reflect that use and occupancy had to have begun before December 14, 1968, not before December 13, 1968. Proposed section 2568.90(a)(4) said that an applicant had to have begun using a parcel of Federal land before December 13, 1968. Three commenters questioned the rationale behind this date and suggested that use and occupancy should be able to begin any time before the repeal of the 1906 Native Allotment Act on December 18, 1971.

Public Land Order (PLO) 4582 withdrew unreserved public lands in Alaska effective December 14, 1968, from all forms of appropriation and disposition under the public land laws. Therefore, no new Native allotments could be initiated after PLO 4582 became effective. Applications for Native allotments could be processed to conclusion as long as occupation began before December 14, 1968. Because of PLO 4582 BLM can't grant a Native allotment if use and occupancy began after December 13, 1968. Public Law 105–276 specifically states, in section 41(a)(2) ''Allotments may be selected only from lands that were vacant, unappropriated, and unreserved on the date when the person eligible for the allotment first used and occupied those lands.''

Section 2568.90(a)(5) explains the use and occupancy criteria Native veterans have to meet. BLM received five comments suggesting that we eliminate the use and occupancy requirements of the 1906 Native Allotment Act for Native veterans or that no greater burden be placed on Native veterans than has been imposed in the past on applicants under the 1906 Act. Although BLM understands that it may be difficult for veterans to show use that began more than 30 years ago, the use and occupancy requirements in the rule are the same requirements that applicants under the 1906 Native Allotment Act had to meet. Public Law 105–276 stated that certain Native veterans will be eligible for allotments if they ''would have been eligible for an allotment under the Act of May 17, 1906 (chapter 2469; 34 Stat. 197), as that Act was in effect before December 18, 1971'' (section 41(b)(1)(A) of Public Law 105–276). Since Public Law 105–276 said that Native veterans must be eligible under the 1906 Act we have no authority to eliminate or modify the use and occupancy requirement in the final rule. We do not believe the rule imposes different use requirements on Native veterans than on other 1906 Act applicants.

Section 2568.91

Section 2568.91 lists the types of land that BLM cannot convey to a Native veteran. We received 18 comments objecting to the types of Federal lands that are not available. The categories of lands that we may not convey which were described in the proposed rule were taken directly from Public Law 105–276. BLM understands that there have been major changes in Alaska land status in the 30 years since the 1906 Native Allotment Act was repealed. We also realize that many areas will not be available under Public Law 105–276 even if Native veterans can show their use and occupancy predated another interest. Congress limited the types of land that BLM can convey to Native veterans and the language in the proposed rule reflected the limitations in the law itself.

The most common objection we received was that paragraph (b) said land selected by the State of Alaska (2568.91(b)) was not available for allotment, even when the applicant's use and occupancy predated the State selection application. Public Law 105–276 prohibits conveyance to a Native veteran of Federal land that is selected by but not yet conveyed to the State of Alaska or to a Native corporation under ANCSA. BLM included in section 2568.91 the same list of prohibited land that appeared in the statute.

Paragraph (c) in the proposed rule said that land selected by a Native corporation under ANCSA is unavailable for conveyance. The section went on to explain that a Native corporation may relinquish up to 160 acres of its selection to allow a Native veteran to receive an allotment as long as this doesn't violate selection rules in 43 CFR 2650 or cause the corporation to become underselected. BLM included this in the proposed rule because several Native corporations were willing

to consider relinquishment of their selections for the benefit of Native veterans.

We interpret the statute to mean that although we can't convey selected land to Native veterans, a voluntary relinquishment from a Native corporation would remove land from the ''selected'' category and would permit conveyance to a Native veteran.

We did not include a similar relinquishment provision in the proposed rule regarding land selected by the State of Alaska. However, we believe a similar provision needs to be included in the final rule to give the State the opportunity to relinquish a selection thereby permitting a Native veteran to receive an allotment. In this final rule BLM is including language regarding the State's option to relinquish up to 160 acres of a selection to allow a Native veteran to apply for an allotment.

However, any Alaska Native veteran must realize that applying for land which BLM cannot convey is very risky. If BLM does not receive and approve a relinquishment from a Native corporation or from the State before the filing period for allotment applications ends, that veteran cannot file an application for an allotment in a different location and is not eligible for an alternative allotment. BLM recommends that Native veterans consider all the risks before filing an application for an allotment on lands that have been selected either by a Native corporation or by the State of Alaska.

We are including a new section 2568.92 concerning the risks involved when a Native veteran applies for land that is selected by a Native corporation or by the State of Alaska. This new section makes it clear that if BLM does not receive and approve a relinquishment from a Native corporation or the State before the end of the allotment application filing period, the allotment applicant will not be able to apply for land in a different location and will not be eligible for an alternative allotment.

To accommodate the addition of a new section 2568.92, section 2568.92 in the proposed rule will become new section 2568.93 in the final rule, proposed section 2568.93 will become new section 2568.94 in the final rule, and the section we are adding on BLM's lack of authority to accept reconveyance of non-Federal land for Native veterans allotments (previously discussed in connection with section 2568.90) will be new section 2568.95.

Section 2568.94 (Proposed Section 2568.93)

Section 2568.93 of the proposed rule stated that BLM cannot convey an allotment to a Native veteran if the land is valuable for sand or gravel. This prohibition was included because Native veterans must comply with the requirements for Native allotments that were in effect before December 18, 1971. BLM received five comments on the proposed rule suggesting that sand and gravel have not been considered ''valuable minerals'' since the passage of the Common Varieties Act of 1955.

The Common Varieties Act of 1955 provided that sand and gravel could no longer be disposed of under the Mining Law of 1872, 30 U.S.C. 21, *et seq.* Instead, sand and gravel would be subject to disposition under other acts such as the Mineral Materials Act, 30 U.S.C. 601. Congress had taken similar action in prior years to remove other minerals such as oil, gas, coal, potassium, phosphate, and sulphur from the operation of the mining laws. These amendments did not change the mineral character of such deposits and certainly did not destroy their value. In some communities where there has been extensive growth, the United States government has received thousands of dollars per acre for the sale of sand and gravel since the Common Varieties Act was passed. In 1978 the Ninth Circuit Court of Appeals recognized in *Chugach Natives, Inc.* v. *Doyon Ltd., et al.* (569 F.2d 491) that sand and gravel were mineral resources and part of the subsurface estate under ANCSA.

Lands valuable for sand or gravel were still considered to be mineral for purposes of evaluating Native allotment applications until 1980 when Congress said in section 905(a)(3) of ANILCA, 43 U.S.C. 1634(a)(3), that such lands were non-mineral. If Congress had considered lands valuable for sand and gravel to be non-mineral before 1980, there would have been no reason to include language in ANILCA saying that such lands were non-mineral. Therefore, section 2568.93, which becomes new section 2568.94 in the final rule, reflects the same prohibition against the conveyance of lands valuable for sand or gravel that was contained in the proposed rule.

Sections 2568.100 through 2568.106

Sections 2568.100 through 2568.106 explain the process a CSU manager will follow to determine if an allotment would be consistent with CSU purposes. BLM received five comments on this process.

Section 2568.101

This section states a Native veteran may receive an allotment if conveyance of the allotment is not inconsistent with the purposes of the CSU. One commenter suggested that a decision of inconsistency should only be made by the Secretary of the Interior, not by a CSU manager. BLM believes the CSU manager is in the best position to make an initial decision of inconsistency based on the resource values of the CSU. It is reasonable for the Secretary to delegate this decision to CSU managers, and it is standard practice for him to delegate such decisions. The Secretary rarely makes such decisions directly, although the Secretary has the option to review any decision made within the Department if he or she chooses to do so.

43 CFR 2568.103

Proposed section 2568.103 explained how a land management agency will determine whether an allotment would be consistent with the purposes of a CSU. The proposed rule said in paragraph (b) that ''You or your representative may also accompany, at your expense, the CSU representative on any field exam.'' BLM received two comments objecting to the language concerning an applicant participating in a field exam at his or her own expense. We believe it is important to make sure the final rule is consistent with existing regulations and practices under the 1906 Native Allotment Act unless the Alaska Native Veterans Allotment Act specifically requires something different. In the final rule we are adopting the suggestion to delete the words ''at your expense'' from the statement in paragraph (b) that the applicant may accompany the CSU representative on a field exam.

The proposed rule also stated, in paragraph (c), that the CSU manager would send a written decision and a resource assessment to BLM, and a copy of the decision to the applicant. It allowed the applicant to request a copy of the resource assessment. One commenter suggested that the applicant should be given a copy of the resource assessment along with the decision document. BLM agrees and in the final rule we are changing this section to specify that the CSU manager will send the applicant a copy of the decision and a copy of the resource assessment.

Section 2568.105

Section 2568.105 in the proposed rule described the situations where an allotment could be found to be consistent with a CSU. Paragraph (a)

stated that an allotment may be consistent if ''You locate an allotment near land that BLM has conveyed to a Native corporation under ANCSA.'' We are modifying section 2568.105(a) in the final rule to make clear that an individual's allotment must be one that he or she is qualified to receive under the 1906 Native Allotment Act.

Section 2568.106

This section establishes the criteria a CSU manager will use in determining whether an allotment would be inconsistent with the purposes of the CSU. One commenter raised concerns about the language in proposed section 2568.106 that would allow the CSU manager, when considering whether an allotment is inconsistent with CSU purposes, to weigh such factors as:

(1) the possible future uses of the allotment,

(2) its isolation from existing private property, and

(3) its possible interference with subsistence activities.

This commenter suggests that Native veteran allotment applicants should not be treated differently from applicants under the 1906 Native Allotment Act.

Public Law 105–276 allows the conveyance of land within CSU's to Native veterans and gives the Department of the Interior authority to determine whether an allotment would be inconsistent with CSU purposes, and, if so, to offer alternative lands to the veteran. Because Public Law 105–276 mandates these conditions which did not apply to 1906 Act applicants, we must carry them out in our regulations. Although Public Law 105–276 does not say what factors the Department should consider in making a determination of inconsistency, BLM believes it is important to give applicants an indication of the criteria we will use to make such a determination. Inconsistency determinations will be made on a case-by-case basis depending upon the specific resource values and purposes of each CSU.

Section 2568.110(c)

Proposed section 2568.110 identified the types of land that would be available for alternative allotments when BLM cannot convey an allotment for which a Native veteran qualifies. Paragraph (c) states that the applicant may choose an alternative allotment from ''vacant, unappropriated, and unreserved land.''

BLM recognizes that paragraph (c), if strictly construed, would make it virtually impossible for an applicant to acquire an alternative allotment because of the vast amount of Federal land still withdrawn for future classification under section 17(d)(1) of ANCSA, 43 U.S.C. 1616(d)(1). The final rule adds language stating that for purposes of this section, the term ''unreserved'' includes land withdrawn solely under the authority of section 17(d)(1) of ANCSA.

Congress has adopted a similar rule on other occasions in the past. One example occurred in section 906(j) of ANILCA, 94 Stat. 2441. The State of Alaska could only select unreserved lands as provided by section 6(b) of the Alaska Statehood Act, 72 Stat. 339, as amended. Section 906(j) of ANILCA said that ''* * *. the following withdrawals, classifications or designations shall not, of themselves, remove the lands involved from the status of vacant, unappropriated, and unreserved lands for the purposes of * * * future State selections * * * : (1) withdrawals for classification pursuant to section 17(d)(1) of the Alaska Native Claims Settlement Act * * *''

Section 2568.113

BLM is adding a new section 2568.113 to the final rule. It states that if the applicant is eligible to choose an alternative allotment, he or she need not prove use and occupancy of the land in the alternative location. We did this to clarify the requirements an applicant must meet when applying for an alternative allotment.

Section 2568.113 in the proposed rule will become new section 2568.114 in the final rule and section 2568.114 in the proposed rule will become new section 2568.115 in the final rule.

Section 2568.114 (Proposed Section 2568.113)

As explained previously, the proposed rule contained language explaining the procedures and requirements relating to allotments in CSU's. Proposed section 2568.113 explained how an applicant would apply for an alternative allotment if the CSU manager determined that conveyance of an allotment in the original location would be inconsistent with the CSU. BLM received one comment suggesting that we modify language in proposed section 2568.113 (new section 2568.114) to clarify that the CSU manager must evaluate an application for an alternative allotment in a CSU to determine if it is consistent with CSU purposes in the same manner as the original application is evaluated. BLM is adding a sentence in new section 2568.114 in the final rule to make clear that the alternative allotment must also not be inconsistent with the CSU.

Sections 2568.120–2568.123

Sections 2568.120 through 123 explain the process for appealing inconsistency decisions made by CSU managers.

One commenter suggested that appeals of inconsistency decisions should be made to the Interior Board of Land Appeals in the same manner as other Native allotment decisions. As we explained in the preamble to the proposed rule, we believe that the individual agencies are best equipped to quickly make these decisions and that land managers can make sound decisions based on their in-depth knowledge of the resources in the CSU's.

Comments on Subjects Not Included in the Proposed Rule

Some of the comments BLM received were related to Native veterans allotments or to Alaska Native Allotments in general but did not pertain to any language that appeared in the proposed rule itself.

Legislative Approval

BLM received two comments suggesting that we should allow the legislative approval provision of Section 905 of ANILCA, 43 U.S.C. 1634(a), to apply to Native veterans allotments. Since ANILCA was enacted in 1980, it does not apply to Native veterans allotments. Public Law 105–276 said that veterans allotments must meet the requirements of the 1906 Native Allotment Act as it was in effect before December 18, 1971.

Additionally, Congress recognized that legislative approval does not apply to Native veterans allotments because legislation was recently introduced that would amend Public Law 105–276 to provide for it. This final rule does not contain any language relating to legislative approval of Native veterans allotments because Public Law 105–276 contains no authority for such approval.

Monetary Compensation

BLM received one comment suggesting that monetary compensation be offered instead of an allotment of land, especially since Public Law 105–276 limited the types of Federal land that can be conveyed.

Public Law 105–276 does not contain any provision for monetary compensation in lieu of an allotment of land. BLM has no authority to include such a provision in its regulations.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These final regulations are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These final regulations will not have an effect of $100 million or more on the economy. They 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. These final regulations will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These final regulations do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor do they raise novel legal or policy issues. The effect of these final regulations will be on a limited number of individuals who are qualified to apply for allotments and on the Interior Department agencies responsible for administering the allotment program. The allotment application period is limited by law to 18 months, and existing staff of responsible agencies will process applications following most of the same rules that are currently in effect for allotment applications under the 1906 Native Allotment Act.

National Environmental Policy Act

Section 910 of the Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980 , 43 U.S.C. 1638, made conveyances, regulations, and other actions which lead to the issuance of conveyances to Natives under ANCSA exempt from NEPA compliance requirements. Since Congress made the Alaska Native Veterans Allotment Act a part of ANCSA, NEPA does not apply.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This final rule will apply only to certain Alaska Native veterans eligible to apply for allotments. This rule applies only to Alaska Native veterans as individuals. Therefore, the Department of the Interior certifies that this document will not have any significant impacts on small entities under the RFA.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These final regulations are not a ''major rule'' as defined at 5 U.S.C. 804(2). This final rule does not meet any of the criteria for a ''major rule'' under the definition contained in SBREFA. The final rule will result in some costs to allotment applicants, and to the Department of the Interior to implement the allotment program over the next several years. It will not result in major cost or price increases for consumers, industries, or regions, and the cost increases for government agencies will be small. This final rule will have no significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The total annual effect on the economy will be far below $100 million. Based on Department of Veterans Affairs data, BLM estimates that about 1,100 individuals with at least one quarter Alaska Native blood meet the military service criteria in the Alaska Native Veterans law and may be eligible to apply for allotments. If each applicant were to choose the maximum number of land parcels allowed (2), the total number of parcels involved would be 2,200. BLM estimates the cost of processing an application for a single allotment parcel does not exceed $25,000, including the cost of adjudication, examination, survey, and conveyance. This estimate is based on the average cost of processing allotment applications originally filed under the Alaska Native Allotment Act of 1906. The total cost to process 2,200 parcels would be $55 million over the life of the program, which is the statutory 18-month application period and as many additional years as necessary to complete all applications. In no case would these costs approximate the $100 million annual impact threshold.

Unfunded Mandates Reform Act

These final regulations do not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year; nor do these final regulations have a significant or unique effect on State, local, or tribal governments or the private sector. The only mandate imposed on State governments will be for the State court appointment of personal representatives in cases involving the estates of certain deceased applicants, but this mandate will cost far below $100 million per year. These final regulations impose no mandate on local or tribal governments or the private sector. Program costs will fall primarily on the Department of the Interior. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)

The final rule does not represent a government action capable of interfering with constitutionally protected property rights. The final rule will allow BLM to convey Federal land only under certain circumstances, and land containing other applications or entries is specifically forbidden by law from being conveyed to Native veterans. Even if a Native veteran could show use and occupancy of land before another application or entry was made, the Native would have no vested property right until he or she filed an application for an allotment under section 41 of ANCSA. No existing applications or entries or other private property interests will be affected by this proposed rule. Therefore, the Department of the Interior has determined that the rule will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The final rule will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The final rule will give the State the authority to voluntarily relinquish up to 160 acres of a selection so that a Native veteran can apply for an allotment, but the State is not required to relinquish. Voluntary relinquishments will have no effect on the State's ability to reach its full acreage entitlement from the Federal government. Native veterans will not be able to apply for land already owned by the State, even if they can show that they used and occupied the land before the State applied for it. Allotments conveyed under section 41 of ANCSA are not taxable, just as allotments conveyed under the 1906 Act are not taxable, so there will be no effect on State or local property tax revenue. Therefore, in accordance with Executive Order 12612, BLM has determined that

this final rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment. Representatives of the State of Alaska and the BLM Alaska have had general discussions on the content of the statute and the final regulations. Representatives of the State of Alaska recognize that lands conveyed to the State are prohibited from land availability under this statute and that the State may relinquish, but is not required to relinquish, a selection to allow a Native veteran to file an allotment application.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this final rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This final rule contains information collection requirements covered under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C 3501 *et seq.* All information requirements pertain to an application form whereby Alaska veterans may apply for the benefits described in this final rule. OMB reviewed and approved an information collection package for the application form. Because all the information requirements are contained in the application form and covered by that information collection package, BLM has not prepared a separate information collection package for these regulations.

The information BLM asks for in the form identified in section 2568.73 will be collected through the allotment application form ''Alaska Native Veteran Allotment Application,'' under OMB form number 1004–0191. BLM will require individual Alaska Native veterans who apply for allotments under section 41 of ANCSA or, in the case of certain deceased veterans, the personal representatives of their estates to comply with the information collection requirement.

Specific information to be collected is as follows:

Name, address, date of birth, telephone number, dates of military service, branch of service, legal description of land for which veteran or representative is applying, dates of occupancy of land, description and value of improvements on land, and specific uses of land.

BLM estimates the total number of respondents will be approximately 1,100 and the burden on new respondents will be approximately 30,800 hours. These estimates apply to the entire 18-month application period. For a 12-month period this works out to 732 applicants and 20,496 hours. The estimate of the number of respondents is based on computer data from the Department of Veterans Affairs concerning Alaska Native veterans with at least one quarter Alaska Native blood who served in the U.S. military between January 1, 1969, and December 31, 1971. This data was further screened to identify those persons who meet the 6 months' service requirement in section 41 of ANCSA. BLM derived the total estimated burden hours by multiplying the number of potential respondents by an estimate of the 28 hours required to complete the application form and obtain the other documentation required by the form. The majority of questions on the form require brief answers, many of them simply ''yes'' or ''no.'' Only two questions require narrative responses and in both cases responses are not required from all applicants.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951) and 512 DM 2 we consulted with tribes as follows:

Section 41 of ANCSA, which authorizes Native allotments for certain veterans, specifically requires that the Department of the Interior promulgate these regulations ''after consultation with Alaska Natives groups.'' BLM has consulted with the Bureau of Indian Affairs throughout the process of this rulemaking and has held public meetings to discuss the rule with Native entities, including tribes. Native views were solicited very early in the rulemaking process and BLM has included all written comments received from tribes and other Native entities in the administrative record for this rule. BLM held additional meetings with Native groups before these regulations became final and considered tribal and other Native views in the final rulemaking. Accordingly:

a. We have consulted with affected tribes.

b. Consultations were open and candid so that the affected tribes could fully evaluate the potential impact of the rule on trust resources.

c. We fully considered tribal views in the final rulemaking.

d. We consulted with the appropriate bureaus and offices of the Department about the potential effects of this rule on tribes. We consulted with the Bureau of Indian Affairs and the Division of Indian Affairs, Office of the Solicitor.

Author

The principal author of this rule is Connie Van Horn, Division of Conveyance Management, Bureau of Land Management, Anchorage, Alaska; assisted by Frank Bruno of BLM's Regulatory Affairs Group, Bureau of Land Management, Washington, DC.

List of Subjects in 43 CFR Part 2560

Alaska, Homesteads, Indian Lands, Public Lands, Public Lands-Sale, and Reporting and Recordkeeping requirements, Alaska Native allotments for certain veterans.

Dated: June 26, 2000.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

PART 2560—[AMENDED]

Accordingly, BLM amends 43 CFR part 2560 as set forth below:

1. The authority citation for part 2560 continues to read as follows:

Authority: 43 U.S.C. 1601 *et seq.*, as amended; Section 432 of Public Law 105–276; 34 Stat. 197, as amended; 42 Stat. 415; 70 Stat. 954; 43 U.S.C. 270–1 through 270–3 (1970).

2. Add subpart 2568 to read as follows:

Subpart 2568—Alaska Native Allotments for Certain Veterans

Purpose

Sec. 2568.10 What Alaska Native allotment benefits are available to certain Alaska Native veterans?

Regulatory Authority

Sec. 2568.20 What is the legal authority for these allotments?

Sec. 2568.21 Do other regulations directly apply to these regulations?

Definitions

Sec. 2568.30 What terms do I need to know to understand these regulations?

Information Collection

Sec. 2568.40 Does BLM have the authority to ask me for the information required in these regulations?

Who is Qualified for an Allotment

Sec. 2568.50 What qualifications do I need to be eligible for an allotment?

Personal Representatives

Sec. 2568.60 May the personal representatives of eligible deceased veterans apply on their behalf?

Sec. 2568.61 What are the requirements for a personal representative?

Sec. 2568.62 Under what circumstances does BLM accept the appointment of a personal representative?
Sec. 2568.63 Under what circumstances does BLM reject the appointment of a personal representative?
Sec. 2568.64 Are there different requirements for giving an allotment to the estate of a deceased veteran?

Applying for an Allotment

Sec. 2568.70 If I am qualified for an allotment, when can I apply?
Sec. 2568.71 Where do I file my application?
Sec. 2568.72 When does BLM consider my application to be filed too late?
Sec. 2568.73 Do I need to fill out a special application form?
Sec. 2568.74 What else must I file with my application?
Sec. 2568.75 Must I include a Certificate of Indian Blood as well as a Department of Defense verification of qualifying military service when I file my application with BLM?
Sec. 2568.76 Do I need to pay any fees when I file my application?
Sec. 2568.77 Do I have to post, on-the-ground, the land in my application?
Sec. 2568.78 Will my application segregate the land for which I am applying from other applications or land actions?
Sec. 2568.79 Are there any rules about the number and size of parcels?
Sec. 2568.80 Does the parcel have to be surveyed before I can receive title to it?
Sec. 2568.81 If BLM finds errors in my application, will BLM give me a chance to correct them?
Sec. 2568.82 If BLM decides that I have not submitted enough information to show qualifying use and occupancy, will it reject my application or give me a chance to submit more information?

Available Lands—General

Sec. 2568.90 If I qualify for an allotment, what land may BLM convey to me?
Sec. 2568.91 Is there land owned by the Federal government that BLM cannot convey to me even if I qualify?
Sec. 2568.92 Is there anything else I should consider if I apply for land that is selected by a Native corporation or by the State of Alaska?
Sec. 2568.93 Is there a limit to how much water frontage my allotment can include?
Sec. 2568.94 Can I receive an allotment of land that is valuable for minerals?
Sec. 2568.95 Will BLM try to reacquire land that has been conveyed out of Federal ownership so it can convey that land to a Native veteran?

Available Lands—Conservation System Units (CSU)

Sec. 2568.100 What is a CSU?
Sec. 2568.101 If the land I used and occupied is within a CSU other than a National Wilderness or any part of a National Forest, can I receive a title to it?
Sec. 2568.102 Is the process by which the managing agency decides whether my allotment is not inconsistent with the CSU the same as other such determination processes?
Sec. 2568.103 By what process does the managing agency of a CSU decide if my allotment would be consistent with the CSU?
Sec. 2568.104 How will a CSU manager determine if my allotment is consistent with the CSU?
Sec. 2568.105 In what situations could a CSU manager likely find an allotment to be consistent with the CSU?
Sec. 2568.106 In what situations could a CSU manager generally find an allotment to be inconsistent with the purposes of a CSU?

Alternative Allotments

Sec. 2568.110 If I qualify for Federal land in one of the categories BLM cannot convey, is there any other way for me to receive an allotment?
Sec. 2568.111 What if BLM decides that I qualify for land that is in the category of Federal land that BLM cannot convey?
Sec. 2568.112 What do I do if BLM notifies me that I am eligible to choose an alternative allotment?
Sec. 2568.113 Do I have to prove that I used and occupied the land I've chosen as an alternative allotment?
Sec. 2568.114 How do I apply for an alternative allotment if the CSU manager determines my application is inconsistent with a CSU?
Sec. 2568.115 When must I apply for an alternative allotment if the CSU manager determines my application is inconsistent with a CSU?

Appeals

Sec. 2568.120 What can I do if I disagree with any of the decisions that are made about my allotment application?
Sec. 2568.121 If an agency determines my allotment is inconsistent with the purposes of a CSU, what can I do if I disagree?
Sec. 2568.122 What then does the CSU manager do with my request for reconsideration?
Sec. 2568.123 Can I appeal the CSU Manager's reconsidered decision if I disagree with it?

Subpart 2568—Alaska Native Allotments For Certain Veterans

Purpose

§ 2568.10 What Alaska Native allotment benefits are available to certain Alaska Native veterans?

Eligible Alaska Native veterans may receive an allotment of one or two parcels of Federal land in Alaska totaling no more than 160 acres.

Regulatory Authority

§ 2568.20 What is the legal authority for these allotments?

(a) The Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.* (ANCSA), as amended.

(b) Section 432 of Public Law 105–276, the Appropriations Act for the Departments of Veterans Affairs and Housing and Urban Development for fiscal year 1999, which amended ANCSA by adding section 41.

(c) The Native Allotment Act of 1906, 34 Stat. 197, as amended, 42 Stat. 415 and 70 Stat. 954, 43 U.S.C. 270–1 through 270–3 (1970).

§ 2568.21 Do other regulations directly apply to these regulations?

Yes. The regulations implementing the Native Allotment Act of 1906, 43 CFR Subpart 2561, also apply to Alaska Native Veteran Allotments to the extent they are not inconsistent with section 41 of ANCSA or other provisions in this Subpart.

Definitions

§ 2568.30 What terms do I need to know to understand these regulations?

Alaska Native is defined in the Native Allotment Act of 1906 as amended by the Act of August 2, 1956, 70 Stat. 954.

Allotment has the same meaning as in 43 CFR 2561.0–5(b).

Conservation System Unit has the same meaning as under Sec. 102(4) of the Alaska National Interest Lands Conservation Act of December 2, 1980, 16 U.S.C. 3102(4).

Consistent and inconsistent mean compatible and incompatible, respectively, in accordance with the guidelines in these regulations in §§ 2568.102 through 2568.106.

Veteran has the same meaning as in 38 U.S.C. 101, paragraph 2.

Information Collection

§ 2568.40 Does BLM have the authority to ask me for the information required in these regulations?

(a) Yes. The Office of Management and Budget has approved, under 44 U.S.C. 3507, the information collection requirements contained in Subpart 2568 and has assigned them clearance number 1004–0191 for Form AK–2561–10. BLM uses this information to determine if using the public lands is appropriate. You must respond to obtain a benefit.

(b) BLM estimates that the public reporting burden for this information is as follows: 28 hours per response to fill out form AK–2561–10. These estimates include the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed and completing the collection of information.

(c) Send comments regarding this burden estimate or any other aspect of this collection to the Information Collection Clearance Officer, Bureau of Land Management, 1849 C St. N.W., Mail Stop 401 LS, Washington, D.C. 20240.

Who Is Qualified for an Allotment

§ 2568.50 What qualifications do I need to be eligible for an allotment?

To qualify for an allotment you must:

(a) Have been eligible for an allotment under the Native Allotment Act as it was in effect before December 18, 1971; and

(b) Establish that you used land in accordance with the regulation in effect before December 18, 1971, and that the land is still owned by the Federal government; and

(c) Be a veteran who served at least six months between January 1, 1969, and June 2, 1971, or enlisted or was drafted after June 2, 1971, but before December 3, 1971; and

(d) Not have already received conveyance or approval of an allotment. (However, if you are otherwise qualified to receive an allotment under the Alaska Native Veterans Allotment Act, you will still qualify even if you received another allotment interest by inheritance, devise, gift, or purchase); and

(e) Not have a Native allotment application pending on October 21, 1998; and

(f) Reside in the State of Alaska or, in the case of a deceased veteran, have been a resident of Alaska at the time of death.

Personal Representatives

§ 2568.60 May the personal representatives of eligible deceased veterans apply on their behalf?

Yes. The personal representative may apply for an allotment, for the benefit of the deceased veteran's heirs, if, between January 1, 1969, and December 31, 1971, the deceased veteran:

(a) Was killed in action,

(b) Was wounded in action and later died as a direct consequence of that wound, as determined and certified by the Department of Veterans Affairs, or

(c) Died while a prisoner of war.

§ 2568.61 What are the requirements for a personal representative?

The person filing the application must present proof of a current appointment as personal representative of the estate of the deceased veteran by the proper court, or proof that this appointment process has begun.

§ 2568.62 Under what circumstances does BLM accept the appointment of a personal representative?

BLM will accept an appointment of personal representative made any time after an eligible person dies, even if that appointment came before enactment of the Alaska Native Veterans Allotment Act.

§ 2568.63 Under what circumstances does BLM reject the appointment of a personal representative?

If the appointment process is incomplete at the time of allotment application filing, the prospective personal representative must file the proof of appointment with BLM within 18 months after the application filing deadline or BLM will reject the application.

§ 2568.64 Are there different requirements for giving an allotment to the estate of a deceased veteran?

No, the estate of the deceased veteran eligible under § 2568.60 must meet the same requirements for a Native allotment as other living Alaska Native veterans. In addition, a deceased veteran must have been a resident of Alaska at the time of death.

Applying for an Allotment

§ 2568.70 If I am qualified for an allotment, when can I apply?

If you are qualified, you can apply between July 31, 2000 and January 31, 2002.

§ 2568.71 Where do I file my application?

You must file your application in person or by mail with the BLM Alaska State Office in Anchorage, Alaska.

§ 2568.72 When does BLM consider my application to be filed too late?

BLM will consider applications to be filed too late if they are:

(a) Submitted in person after the deadline in section 2568.70, or

(b) Postmarked after the deadline in section 2568.70.

§ 2568.73 Do I need to fill out a special application form?

Yes. You must complete form no. AK–2561–10, ''Alaska Native Veteran Allotment Application.''

§ 2568.74 What else must I file with my application?

You must also file:

(a) A Certificate of Indian Blood (CIB), which is a Bureau of Indian Affairs form,

(b) A DD Form 214 ''Certificate of Release or Discharge from Active Duty'' or other documentation from the Department of Defense (DOD) to verify military service, as well as any information on cause of death supplied by the Department of Veterans Affairs,

(c) A map at a scale of 1:63,360 or larger, sufficient to locate on-the-ground the land for which you are applying, and

(d) A legal description of the land for which you are applying. If there is a discrepancy between the map and the legal description, the map will control. The map must be sufficient to allow BLM to locate the parcel on the ground. If there is a discrepancy between the map or legal description and the location of the parcel on the ground, the location as posted on the ground will control. You must also estimate the number of acres in each parcel.

§ 2568.75 Must I include a Certificate of Indian Blood as well as a Department of Defense verification of qualifying military service when I file my application with BLM?

Yes.

(a) If the CIB or DOD verification of qualifying military service is missing when you file the application, BLM will ask you to provide the information within the time specified in a notice. BLM will not process the application until you file the necessary documents but will consider the application as having been filed on time.

(b) A personal representative filing on behalf of the estate of a deceased veteran must file the Department of Veterans Affairs verification of cause of death.

§ 2568.76 Do I need to pay any fees when I file my application?

No. You do not need to pay a fee to file an application.

§ 2568.77 Do I have to post, on-the-ground, the land in my application?

(a) Yes. Before you file your application you must post the land by marking all corners on the ground with your name and address.

(b) On land within a CSU, you must get a free special use permit from the CSU manager before you erect any signs or markers. The CSU manager may establish in the permit a maximum size of any signs or markers. If the CSU manager later decides under section 2568.104 that your allotment is not consistent with the CSU, you must promptly remove the signs or markers unless the CSU manager waives this requirement in the special use permit.

§ 2568.78 Will my application segregate the land for which I am applying from other applications or land actions?

The filing of an application with a sufficient description to identify the lands will segregate those lands. ''Segregation'' has the same meaning as in 43 CFR 2091.0–5(b).

§ 2568.79 Are there any rules about the number and size of parcels?

Yes. You may apply for one or two parcels, but if you apply for two parcels the two combined cannot total more than 160 acres. You may apply for less than 160 acres. Each parcel must be reasonably compact.

§ 2568.80 Does the parcel have to be surveyed before I can receive title to it?

Yes. The land in your application must be surveyed before BLM can convey it to you. BLM will survey your allotment at no charge to you, or you may obtain a private survey. BLM must approve the survey if it is done by a private surveyor.

§ 2568.81 If BLM finds errors in my application, will BLM give me a chance to correct them?

Yes. If you file your application during the 18-month filing period and BLM finds correctable errors, it will consider the application as having been filed on time once you correct them. BLM will send you a notice advising you of any correctable errors and give you at least 60 days to correct them. You must make corrections within the specified time or BLM will reject your application.

§ 2568.82 If BLM decides that I have not submitted enough information to show qualifying use and occupancy, will it reject my application or give me a chance to submit more information?

(a) BLM will not reject your application without giving you an opportunity for a hearing to establish the facts of your use.

(b) If BLM cannot determine from the information you submit that you met the use and occupancy requirements of the 1906 Act, it will send you a notice saying that you have not submitted enough evidence and will give you at least 60 days to file additional information.

(c) If you do not submit additional evidence by the end of the time BLM gives you or if you submit additional evidence but BLM still cannot determine that you meet the use and occupancy requirements, the following process will occur:

(1) BLM will issue a formal contest complaint telling you why it believes it should reject your application.

(2) If you answer the complaint and tell BLM you want a hearing, BLM will ask an Administrative Law Judge (ALJ) of the Interior Department, Office of Hearings and Appeals, to preside over a hearing to establish the facts of your use and occupancy.

(3) The ALJ will evaluate all the written evidence and oral testimony and issue a decision.

(4) You can appeal this decision to the Interior Board of Land Appeals according to 43 CFR Part 4.

Available Lands—General

§ 2568.90 If I qualify for an allotment, what land may BLM convey to me?

You may receive title only to:

(a) Land that:

(1) Is currently owned by the Federal government,

(2) Was vacant, unappropriated, and unreserved when you first began to use and occupy it,

(3) Has not been continuously withdrawn since before your sixth birthday,

(4) You started using before December 14, 1968, the date when Public Land Order 4582 withdrew all unreserved public lands in Alaska from all forms of appropriation and disposition under the public land laws, and

(5) You prove by a preponderance of the evidence that you used and occupied in a substantially continuous and independent manner, at least potentially exclusive of others, for five or more years. This possession of the land must not be merely intermittent. ''Preponderance of evidence'' means evidence which is more convincing than the evidence offered in opposition to it; that is, evidence which as a whole shows that the fact you are trying to prove is more likely a fact than not.

(b) Substitute land explained in 43 CFR 2568.110.

§ 2568.91 Is there land owned by the Federal government that BLM cannot convey to me even if I qualify?

You cannot receive an allotment containing any of the following:

(a) A regularly used and recognized campsite that is primarily used by someone other than yourself. The campsite area that you cannot receive is that which is actually used as a campsite.

(b) Land presently selected by, but not conveyed to, the State of Alaska. The State may relinquish up to 160 acres of its selection to allow an eligible Native veteran to receive an allotment;

(c) Land presently selected by, but not conveyed to, a Native corporation as defined in 43 U.S.C. 1602(m). A Native corporation may relinquish up to 160 acres of its selection to allow an eligible Native veteran to receive an allotment, as long as the remaining ANCSA selection comports with the appropriate selection rules in 43 CFR 2650. Any such relinquishment must not cause the corporation to become underselected. See 43 U.S.C. 1621(j)(2) for a definition of underselection;

(d) Land designated as wilderness by statute;

(e) Land acquired by the Federal government through gift, purchase, or exchange;

(f) Land containing any development owned or controlled by a unit of government, or a person other than yourself;

(g) Land withdrawn or reserved for national defense, other than the National Petroleum Reserve-Alaska;

(h) National Forest land; or

(i) Land selected or claimed, but not yet conveyed, under a public land law, including but not limited to the following:

(1) Land within a recorded mining claim;

(2) Home sites;

(3) Trade and manufacturing sites;

(4) Reindeer sites and headquarters sites;

(5) Cemetery sites.

§ 2568.92 Is there anything else I should consider if I apply for land that is selected by a Native corporation or by the State of Alaska?

You must realize that applying for land which cannot be conveyed because it has been selected by a Native corporation or by the State is very risky. If BLM does not receive and approve a relinquishment from a Native corporation or the State before the allotment application filing period ends, you cannot file an application for an allotment in a different location and you will not be eligible for an alternative allotment.

§ 2568.93 Is there a limit to how much water frontage my allotment can include?

Yes, in some cases. You will normally be limited to a half-mile (referred to as 160 rods in the regulations at 43 CFR part 2094) along the shore of a navigable water body. If you apply for land that extends more than a half-mile, BLM will treat your application as a request to waive this limitation. As explained in 43 CFR 2094.2, BLM can waive the half-mile limitation if it determines the land is not needed for a harborage, wharf, or boat landing area, and that a waiver would not harm the public interest.

§ 2568.94 Can I receive an allotment of land that is valuable for minerals?

BLM can convey an allotment that is known to be or believed to be valuable for coal, oil, or gas, but the ownership of these minerals remains with the Federal government. BLM cannot convey to you land valuable for other kinds of minerals such as gold, silver, sand or gravel. If BLM conveys an allotment that is valuable for coal, oil, or gas, the allottee owns all minerals in the land except those expressly reserved to the United States in the conveyance.

§ 2568.95 Will BLM try to reacquire land that has been conveyed out of Federal ownership so it can convey that land to a Native veteran?

No. The Alaska Native Veterans Allotment Act does not give BLM the

authority to reacquire former Federal land in order to convey it to a Native veteran.

Available Lands—Conservation System Units (CSU)

§ 2568.100 What is a CSU?

A CSU is an Alaska unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, or a National Forest Monument.

§ 2568.101 If the land I used and occupied is within a CSU other than a National Wilderness or any part of a National Forest, can I receive a title to it?

You may receive title if you qualify for that allotment and the managing agency of the CSU agrees that conveyance of that allotment is not inconsistent with the purposes of the CSU.

§ 2568.102 Is the process by which the managing agency decides whether my allotment is not inconsistent with the CSU the same as other such determination processes?

No. This process is unique to this regulation. It should not be confused with any similar process under any other act, including the incompatibility process under the National Wildlife Refuge System Improvement Act of 1997.

§ 2568.103 By what process does the managing agency of a CSU decide if my allotment would be consistent with the CSU?

(a) BLM conducts a field exam, with you or your representative, to check the boundaries of the land for which you are applying and to look for signs of use and occupancy. The CSU manager or a designated representative may also attend the field exam.

(b) The CSU manager or representative assesses the resources to determine if the allotment would be consistent with CSU purposes at that location. You may submit any other information for the CSU manager to consider. You or your representative may also accompany the CSU representative on any field exam.

(c) The CSU manager submits a written decision and resource assessment to BLM within 18 months of the BLM field exam. The CSU manager will send you a copy of the decision and a copy of the resource assessment.

§ 2568.104 How will a CSU manager determine if my allotment is consistent with the CSU?

The CSU manager will decide this on a case-by-case basis by considering the law or withdrawal order which created the CSU. The law or withdrawal order explains the purposes for which the CSU was created. The manager would also consider the mission of the CSU managing agency as established in law and policy. The manager will also consider how the cumulative impacts of the various activities that could take place on the allotment might affect the CSU.

§ 2568.105 In what situations could a CSU manager likely find an allotment to be consistent with the CSU?

An allotment could generally be consistent with the purposes of the CSU if:

(a) The allotment for which you qualify is located near land that BLM has conveyed to a Native corporation under ANCSA, or,

(b) A Native corporation has selected the land under ANCSA and has said it would relinquish such selection, as long as the remaining ANCSA selection comports with the appropriate selection rules in 43 CFR 2650. Any relinquishment must not cause the corporation to become underselected. See 43 U.S.C. 1621(j)(2) for a definition of underselection.

§ 2568.106 In what situations could a CSU manager generally find an allotment to be inconsistent with the purposes of a CSU?

An allotment could generally be inconsistent in situations including, but not limited to, the following:

(a) If, by itself or as part of a group of allotments, it could significantly interfere with biological, physical, cultural, scenic, recreational, natural quiet or subsistence values of the CSU.

(b) If, by itself or as part of a group of allotments, it obstructs access by the public or managing agency to the resource values of surrounding CSU lands.

(c) If, by itself or as part of a group of allotments, it could trigger development or future uses in an area that would adversely affect resource values of surrounding CSU lands.

(d) If it is isolated from existing private properties and opens an area of a CSU to new access and uses that adversely affect resource values of the surrounding CSU lands.

(e) If it interferes with the implementation of the CSU management plan.

Alternative Allotments

§ 2568.110 If I qualify for Federal land in one of the categories BLM cannot convey, is there any other way for me to receive an allotment?

Yes. If you qualify for land in one of the categories listed in section 2568.91 which BLM cannot convey, you may choose an alternative allotment from the following types of land within the same ANCSA Region as the land for which you originally qualified:

(a) Land within an original withdrawal under section 11(a)(1) of ANCSA for selection by a Village Corporation which was:

(1) Not selected,

(2) Selected and later relinquished, or

(3) Selected and later rejected by BLM;

(b) Land outside of, but touching a boundary of a Village withdrawal, not including land described in section 2568.91 or land within a National Park; or

(c) Vacant, unappropriated, and unreserved land. (For purposes of this section, the term ''unreserved'' includes land withdrawn solely under the authority of section 17(d)(1) of ANCSA.)

§ 2568.111 What if BLM decides that I qualify for land that is in the category of Federal land that BLM cannot convey?

BLM will notify you in writing that you are eligible to choose an alternative allotment from lands described in section 2568.110.

§ 2568.112 What do I do if BLM notifies me that I am eligible to choose an alternative allotment?

You must file a request for an alternative allotment in the Alaska State Office as stated in section 2568.71 and follow all the requirements you did for your original allotment application.

§ 2568.113 Do I have to prove that I used and occupied the land I've chosen as an alternative allotment?

No. If BLM cannot convey the allotment for which you originally apply, and you are eligible to choose an alternative allotment, you do not have to prove that you used and occupied the land in the alternative location.

§ 2568.114 How do I apply for an alternative allotment if the CSU manager determines my application is inconsistent with a CSU?

You should contact the appropriate CSU manager as quickly as possible to discuss resource concerns, potential constraints, and impacts on existing management plans. After you do this you must file a request for an alternative allotment with the BLM Alaska State Office as stated in section 2568.71 and follow all the requirements of the original allotment application. If the alternative allotment land is also in the CSU, the CSU manager will evaluate it to determine if conveyance of an allotment there would be inconsistent with the CSU as well.

§ 2568.115 When must I apply for an alternative allotment if the CSU manager determines my application is inconsistent with a CSU?

Your application for an alternative allotment must be filed:

(a) Within 12 months of when you receive a decision from a CSU manager that says your original allotment is inconsistent with the purposes of the CSU or,

(b) Within six months of when you receive a decision from the CSU manager on your request for reconsideration of the original decision affirming that your original allotment is inconsistent with the purposes of the CSU, or

(c) Within three months of the date an appellate decision from the appropriate Federal official becomes final. This official will be either:

(1) The Regional Director of the National Park Service (NPS),

(2) The Regional Director of the U.S. Fish and Wildlife Service (USFWS), or

(3) The BLM Alaska State Director

Appeals

§ 2568.120 What can I do if I disagree with any of the decisions that are made about my allotment application?

You may appeal all decisions, except for CSU inconsistency decisions or determinations by the Department of Veterans Affairs, to the Interior Board of Land Appeals under 43 CFR Part 4.

§ 2568.121 If an agency determines my allotment is inconsistent with the purposes of a CSU, what can I do if I disagree?

(a) You may request reconsideration of a CSU manager's decision by sending a signed request to that manager.

(b) The request for reconsideration must be submitted in person or correctly addressed and postmarked to the CSU manager no later than 90 calendar days of when you received the decision.

(c) The request for reconsideration must include:

(1) The BLM case file number of the application and parcel, and

(2) Your reason(s) for filing the reconsideration, and any new pertinent information.

§ 2568.122 What then does the CSU manager do with my request for reconsideration?

(a) The CSU manager will reconsider the original inconsistency decision and send you a written decision within 45 calendar days after he or she receives your request. The 45 days may be extended for a good reason in which case you would be notified of the extension in writing. The reconsideration decision will give the CSU Manager's reasons for this new decision and it will summarize the evidence that the CSU manager used.

(b) The reconsideration decision will provide information on how to appeal if you disagree with it.

§ 2568.123 Can I appeal the CSU Manager's reconsidered decision if I disagree with it?

(a) Yes. If you or your legal representative disagree with the decision you may appeal to the appropriate Federal official designated in the appeal information you receive with the decision. That official will be either the NPS Regional Director, the USFWS Regional Director, or the BLM Alaska State Director, depending on the CSU where your proposed allotment is located.

(b) Your appeal must:

(1) Be in writing,

(2) Be submitted in person to the CSU manager or correctly addressed and postmarked no later than 45 calendar days of when you received the reconsidered decision.

(3) State any legal or factual reason(s) why you believe the decision is wrong. You may include any additional evidence or arguments to support your appeal.

(c) The CSU manager will send your appeal to the appropriate Federal official, which is either the NPS Regional Director, the USFWS Regional Director, or the BLM Alaska State Director.

(d) You may present oral testimony to the appropriate Federal official to clarify issues raised in the written record.

(e) The appropriate Federal official will send you his or her written decision within 45 calendar days of when he or she receives your appeal. The 45 days may be extended for good reason in which case you would be notified of the extension in writing.

(f) The decision of the appropriate Federal official is the final administrative decision of the Department of the Interior.

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 4387/P.L. 106–226

To provide that the School Governance Charter Amendment Act of 2000 shall take effect upon the date such Act is ratified by the voters of the District of Columbia. (June 27, 2000; 114 Stat. 459)

H.J. Res. 101/P.L. 106–227

Recognizing the 225th birthday of the United States Army. (June 28, 2000; 114 Stat. 460)

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