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Rules and Regulations

Federal Register

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Friday, December 8, 2000

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

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1792

RIN 0572–AB47

Seismic Safety

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Services (RUS) is amending its regulation to update and simplify the requirements of the agency. This final rule provides RUS borrowers, grant recipients, Rural Telephone Bank (RTB) borrowers and the public with updated rules for compliance with seismic safety requirements for new building construction using RUS or RTB loan, grant or guaranteed funds or funds provided through lien accommodations or subordinations approved by RUS or RTB. These revisions will identify model codes and standards found to provide a required level of seismic safety.

EFFECTIVE DATE: December 8, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Heald, Structural Engineer, Transmission Branch, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1569, Washington, DC 20250–1569. Telephone: (202) 720–9102. Fax: (202) 720–7491.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with state and local offices. See the final rule related notice entitled ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034).

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule; and, in accordance with § 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)) administrative appeals procedure, if any are required, must be exhausted prior to initiating litigation against the Department or its agencies.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that this rule will not have significant impact on a substantial number of small entities defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS and RTB loan programs provide borrowers with loans at interest rates and terms that are more favorable than those generally available from the private sector. Borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct cost associated with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

The reporting and recordkeeping requirements contained in this rule has been approved by the Office of Management and Budget (OMB) under OMB Control No. 0572–0099, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Send questions or comments regarding this burden or any other aspect of these collections of information, including suggestions for reducing the burden, to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., Stop 1522, Washington, DC 20250–1522.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The programs covered by this rule are listed in the Catalog of Federal Domestic Assistance programs under numbers 10.850, Rural Electrification Loans and Loan Guarantees; 10.851, Rural Telephone Loans and Loan Guarantees; 10.852, Rural Telephone Bank Loans; 10.760, Water and Waste Disposal System for Rural Communities; 10.764, Resource Conservation Development Loans, and 10.765, Watershed Protection and Flood Prevention Loans.

This catalog is available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325. Telephone: (202) 512–1800.

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of Title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

Background

RUS requires borrowers and grant recipients to meet applicable requirements mandated by Federal statutes and regulations to obtain RUS financing. One such requirement is compliance with building safety provisions of the Earthquake Hazards Reduction Act of 1977, (42 U.S.C. 7701 *et seq.*) as implemented pursuant to Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction (3 CFR, 1990 Comp., pg. 269).

Subpart C of this part codifies the policies and requirements that RUS and RTB borrowers and grant recipients must meet for new building construction when using funds

provided or guaranteed by RUS or RTB (or when obtained through a lien accommodation or subordination approved by RUS or RTB).

The Executive Order requires all Federal agencies to ensure that any new building which is leased for federal users or purchased or constructed with federal assistance is designed and constructed in accordance with appropriate seismic design standards. Those standards must be equivalent to or exceed the seismic safety levels in the National Earthquake Hazards Reduction Program (NEHRP) recommended provisions for the development of seismic regulations for new buildings. The Executive Order charges the Interagency Committee on Seismic Safety in Construction (ICSSC) with recommending appropriate and cost-effective seismic design, construction standards and practices.

The ICSSC has identified several model codes and standards that provide an acceptable level of seismic safety. The existing regulation in this subpart is revised to identify new model codes or standards which are equivalent to the 1994 NEHRP Recommended Provisions for the Development of Seismic Regulations for New Buildings.

A proposed rule was published May 26, 2000, at 65 FR 34125, with the comment period ending July 25, 2000. No comments were received in response to the proposed rule.

List of Subjects in 7 CFR Part 1792

Buildings and facilities, Electric power, Grant programs, Loan programs, Reporting and recordkeeping requirements, Rural area, Seismic safety, Telephone.

For reasons contained in the preamble, chapter XVII of title 7 of the Code of Federal Regulations is amended to read as follows:

PART 1792—COMPLIANCE WITH OTHER FEDERAL STATUTES, REGULATIONS, AND EXECUTIVE ORDERS

1. The authority citation for this part is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*, and 42 U.S.C. 7701 *et seq.*

Subpart C—Seismic Safety

2. Section 1792.101 is amended by revising paragraph (b) and removing paragraphs (c), (d), and (e), to read as follows:

§ 1792.101 General.

* * * * *

(b) This subpart identifies acceptable seismic standards which must be employed in new building construction funded by loans, grants, or guarantees made by the Rural Utilities Service (RUS) or the Rural Telephone Bank (RTB) (or through lien accommodations or subordinations approved by RUS or RTB).

3. Section 1792.102 is amended by revising the definitions for ''RUS'' and ''Seismic,'' removing ''REA,'' and adding the definition of ''Model Code'' to read as follows:

§ 1792.102 Definitions.

* * * * *

Model Code—A building code developed for the adoption of local or state authorities or to be used as the basis of a local or state building code.

* * * * *

RUS—Rural Utilities Service, and for the purposes of this subpart, shall include the Rural Telephone Bank. For the purposes of RTB borrowers, as used in this subpart, RUS means RTB and Administrator means Governor.

Seismic—Related to or caused by earthquakes.

* * * * *

4. Sections 1792.103 and 1792.104 are revised to read as follows:

§ 1792.103 Seismic design and construction standards for new buildings.

(a) In the design and construction of federally assisted buildings, the borrowers and grant recipients must utilize the seismic provisions of the most recent edition of those standards and practices that are substantially equivalent to or exceed the seismic safety level in the most recent or immediately preceding edition of the NEHRP Recommended Provisions for the Development of Seismic Regulation for New Buildings.

(b) Each of the following model codes or standards has been found to provide a level of seismic safety substantially equivalent to that provided by the use of the 1994 NEHRP Recommended Provisions and appropriate for federally assisted new building construction:

(1) 1997 International Conference of Building Officials (ICBO) Uniform Building Code. Copies are available from ICBO, Austin Regional Office, 9300 Jollyville Road, Suite 101, Austin, Texas 78759–7455.

(2) 1995 American Society of Civil Engineers (ASCE) 7, *Minimum Design Loads for Buildings and Other Structures.* Copies are available from ASCE, 345 East 47th Street, New York, New York 10017–2398.

(c) The NEHRP Recommended Provisions for the Development of Seismic Regulations for New Buildings is available from the Office of Earthquakes and Natural Hazards, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

§ 1792.104 Seismic acknowledgments.

For each applicable building, borrowers and grant recipients must provide RUS a written acknowledgment from a registered architect or engineer responsible for the design stating that seismic provisions pursuant to § 1792.103(b) will be used in the design of the building. This acknowledgement will include the identification and date of the model code or standard that is used for the seismic design of the seismic design of the building project and the seismic factor for the building location.

Dated: December 1, 2000.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 00–31296 Filed 12–7–00; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 11

[Docket No. RM86–2–000]

Update of the Federal Energy Regulatory Commission's Fees Schedule for Annual Charges for the Use of Government Lands

November 28, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; update of Federal land use fees.

SUMMARY: On May 8, 1987, the Commission issued its final rule amending Part 11 of its regulations (Order No. 469, 52 FR 18201(May 14, 1987)). The final rule revised the billing procedures for annual charges for administering Part I of the Federal Power Act, the billing procedures for charges for Federal dam and land use, and the methodology for assessing Federal land use charges.

In accordance with the Commission's regulations, the Commission by its designee, the Executive Director, is updating its schedule of fees for the use of government lands. The yearly update is based on the most recent schedule of fees for the use of linear rights-of-way prepared by the United States Forest Service. Since the next fiscal year will cover the period from October 1, 2000, through September 30, 2001, the fees in

this notice will become effective October 1, 2000. The fees will apply to fiscal year 2001 annual charges for the use of government lands.

The Commission has concluded, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C 804(2).

EFFECTIVE DATE: October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Fannie Kingsberry,Financial Services Division, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 219–2885.

SUPPLEMENTARY INFORMATION:

Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

- CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.
- CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.
- RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.fed.us*) or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

List of Subjects in 18 CFR Part 11

Electric power, Reporting and recordkeeping requirements.

Thomas R. Herlihy,

Executive Director and Chief Financial Officer.

Accordingly, the Commission, effective October 1, 2000, amends Part 11 of Chapter I, Title 18 of the Code of Federal Regulations, as follows.

PART 11—[AMENDED]

1. The authority citation for Part 11 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

2. In Part 11, Appendix A is revised to read as follows:

Appendix A To Part 11—Fee Schedule for FY 2001

STATE	COUNTY	RATE PER ACRE
ALABAMA	ALL COUNTIES	$25.35
ARKANSAS	ALL COUNTIES	19.02
ARIZONA	APACHE	6.32
	COCHISE	
	GILA	
	GRAHAM	
	LA PAZ	
	MOHAVE	
	NAVAJO	
	PIMA	
	YAVAPAI	
	YUMA	
	COCONINO NORTH OF COLORADO RIVER	
	COCONINO SOUTH OF COLORADO RIVER	25.35
	GREENLEE	
	MARICOPA	
	PINAL	
	SANTA CRUZ	
CALIFORNIA	IMPERIAL	12.68
	INYO	
	LASSEN	
	MODOC	
	RIVERSIDE	
	SAN BERNARDINO	
	SISKIYOU	19.02
	ALAMEDA	31.69
	ALPINE	
	AMADOR	
	BUTTE	
	CALAVERAS	
	COLUSA	
	CONTRA COSTA	
	DEL NORTE	
	EL DORADO	

STATE	COUNTY	RATE PER ACRE
	FRESNO	
	GLENN	
	HUMBOLDT	
	KERN	
	KINGS	
	LAKE	
	MADERA	
	MARIPOSA	
	MENDICINO	
	MERCED	
	MONO	
	NAPA	
	NEVADA	
	PLACER	
	PLUMAS	
	SACRAMENTO	
	SAN BENITO	
	SAN JOAQUIN	
	SANTA CLARA	
	SHASTA	
	SIERRA	
	SOLANO	
	SONOMA	
	STANISLAUS	
	SUTTER	
	TEHAMA	
	TRINITY	
	TULARE KINGS	
	TUOLUMNE	
	YOLO	
	YUBA	
	LOS ANGELES	38.05
	MARIN	
	MONTEREY	
	ORANGE	
	SAN DIEGO	
	SAN FRANCISCO	
	SAN LUIS OBISPO	
	SAN MATEO	
	SANTA BARBARA	
COLORADO	ADAMS	6.32
	ARAPAHOE	
	BENT	
	CHEYENNE	
	CROWLEY	
	ELBERT	
	EL PASO	
	HUERFANO	
	KIOWA	
	KIT CARSON	
	LINCOLN	
	LOGAN	
	MOFFAT	
	MONTEZUMA	
	MORGAN	
	PUEBLO	
	SEDGEWICK	
	WASHINGTON	
	WELD	
	YUMA	
	BACA	12.68
	DOLORES	
	GARFIELD	
	LAS ANIMAS	
	MESA	
	MONTROSE	
	OTERO	
	PROWERS	
	RIO BLANCO	
	ROUTT	
	SAN MIGUEL	
	ALAMOSA	25.35
	ARCHULETA	

STATE	COUNTY	RATE PER ACRE
	BOULDER	
	CHAFFEE	
	CLEAR CREEK	
	CONEJOS	
	COSTILLA	
	CUSTER	
	DENVER	
	DELTA	
	DOUGLAS	
	EAGLE	
	FREMONT	
	GILPIN	
	GRAND	
	GUNNISON	
	HINSDALE	
	JACKSON	
	JEFFERSON	
	LAKE	
	LA PLATA	
	LARIMER	
	MINERAL	
	OURAY	
	PARK	
	PITKIN	
	RIO GRANDE	
	SAGUACHE	
	SAN JUAN	
	SUMMIT	
	TELLER	
CONNECTICUT	ALL COUNTIES	6.32
FLORIDA	BAKER	38.05
	BAY	
	BRADFORD	
	CALHOUN	
	CLAY	
	COLUMBIA	
	DIXIE	
	DUVAL	
	ESCAMBIA	
	FRANKLIN	
	GADSDEN	
	GILCHRIST	
	GULF	
	HAMILTON	
	HOLMES	
	JACKSON	
	JEFFERSON	
	LAFAYETTE	
	LEON	
	LIBERTY	
	MADISON	
	NASSAU	
	OKALOOSA	
	SANTA ROSA	
	SUWANNEE	
	TAYLOR	
	UNION	
	WAKULLA	
	WALTON	
	WASHINGTON	
	ALL OTHERS COUNTIES	63.38
GEORGIA	ALL COUNTIES	38.05
IDAHO	CASSIA	6.32
	GOODING	
	JEROME	
	LINCOLN	
	MINIDOKA	
	ONEIDA	
	OWYHEE	
	POWER	
	TWIN FALLS	19.02
	ADA	
	ADAMS	

STATE	COUNTY	RATE PER ACRE
	BANNOCK	
	BEAR LAKE	
	BENEWAH	
	BINGHAM	
	BLAINE	
	BOISE	
	BONNER	
	BONNEVILLE	
	BOUNDARY	
	BUTTE	
	CAMAS	
	CANYON	
	CARIBOU	
	CLARK	
	CLEARWATER	
	CUSTER	
	ELMORE	
	FRANKLIN	
	FREMONT	
	GEM	
	IDAHO	
	JEFFERSON	
	KOOTENAI	
	LATAH	
	LEMHI	
	LEWIS	
	MADISON	
	NEZ PERCE	
	PAYETTE	
	SHOSHONE	
	TETON	
	VALLEY	
	WASHINGTON	
ILLINOIS	ALL COUNTIES	19.02
INDIANA	ALL COUNTIES	31.69
KANSAS	MORTON	12.68
	ALL OTHER COUNTIES	6.32
KENTUCKY	ALL COUNTIES	19.02
LOUISIANA	ALL COUNTIES	38.05
MAINE	ALL COUNTIES	19.02
MICHIGAN	ALGER	19.02
	BARAGA	
	CHIPPEWA	
	DELTA	
	DICKINSON	
	GOGEBIC	
	HOUGHTON	
	IRON	
	KEWEENAW	
	LUCE	
	MACKING	
	MARQUETTE	
	MENOMINEE	
	ONTONAGON	
	SCHOOLCRAFT	
	ALL OTHER COUNTIES	25.35
MINNESOTA	ALL COUNTIES	19.02
MISSISSIPPI	ALL COUNTIES	25.35
MISSOURI	ALL COUNTIES	19.02
MONTANA	BIG HORN	6.32
	BLAINE	
	CARTER	
	CASCADE	
	CHOUTEAU	
	CUSTER	
	DANIELS	
	MECONE	
	MEAGHER	
	DAWSON	6.32
	FALLON	
	FERGUS	
	GARFIELD	
	GLACIER	

STATE	COUNTY	RATE PER ACRE
	GOLDEN VALLEY	
	HILL	
	JUDITH BASIN	
	LIBERTY	
	MUSSELSHELL	
	PETROLEUM	
	PHILLIPS	
	PONDERA	
	POWER RIVER	
	PRAIRIE	
	RICHLAND	
	ROOSEVELT	
	ROSEBUD	
	SHERIDAN	
	TETON	
	TOOLE	
	TREASURE	
	VALLEY	
	WHEATLAND	
	WIBAUX	
	YELLOWSTONE	
	BEAVERHEAD	19.02
	BROADWATER	
	CARBON	
	DEER LODGE	
	FLATHEAD	
	GALLATIN	
	GRANITE	
	JEFFERSON	
	LAKE	
	LEWIS & CLARK	
	LINCOLN	
	MADISON	
	MINERAL	
	MISSOULA	
	PARK	
	POWELL	
	RAVALLI	
	SANDERS	
	SILVER BOW	
	STILLWATER	
	SWEET GRASS	
NEBRASKA	ALL COUNTIES	6.32
NEVADA	CHURCHILL	3.16
	CLARK	
	ELKO	
	ESMERALDA	
	EUREKA	
	HUMBOLDT	
	LANDER	
	LINCOLN	
	LYON	
	MINERAL	
	NYE	
	PERSHING	
	WASHOE	
	WHITE PINE	
	CARSON CITY	31.69
	DOUGLAS	
	STORY	
NEW HAMPSHIRE	ALL COUNTIES	19.02
NEW MEXICO	CHAVES	6.32
	CURRY	
	DE BACA	
	DONA ANA	
	EDDY	
	GRANT	
	GUADALUPE	
	HARDING	
	HIDALGO	
	LEA	
	LUNA	
	MCKINLEY	

STATE	COUNTY	RATE PER ACRE
	OTERO	
	QUAY	
	ROOSEVELT	
	SAN JUAN	
	SOCORRO	
	TORRENCE	12.68
	RIO ARRIBA	
	SANDOUAL	
	UNION	
	BERNALILLO	25.35
	CATRON	
	CIBOLA	
	COLFAX	
	LINCOLN	
	LOS ALAMOS	
	MORA	
	SAN MIGUEL	
	SANTA FE	
	SIERRA	
	TAOS	
	VALENCIA	
NEW YORK	ALL COUNTIES	25.35
NORTH CAROLINA	ALL COUNTIES	38.05
NORTH DAKOTA	ALL COUNTIES	6.32
OHIO	ALL COUNTIES	25.35
OKLAHOMA	BEAVER	12.68
	CIMARRON	
	ROGER MILLS	
	TEXAS	
	LE FLORE	19.02
	MC CURTAIN	
	ALL OTHER COUNTIES	6.32
PENNSYLVANIA	ALL COUNTIES	25.35
OREGON	HARNEY LAKE	6.32
	MALHEUR	
	BAKER	12.68
	CROOK	
	DESCHUTES	
	GILLAM	
	GRANT	
	JEFFERSON	
	KLAMATH	
	MORROW	
	SHERMAN	
	UMATILLA	
	UNION	
	WALLOWA	
	WASCO	
	WHEELER	
	COOS	19.02
	CURRY	
	DOUGLAS	
	JACKSON	
	JOSEPHINE	
	BENTON	25.35
	CLACKAMAS	
	CLATSOP	
	COLUMBIA	
	HOOD RIVER	
	LANE	
	LINCOLN	
	LINN	
	MARION	
	MULTNOMAH	
	POLK	
	TILLAMOOK	
	WASHINGTON	
	YAMHILL	
PENNSYLVANIA	ALL COUNTIES	25.35
PUERTO RICO	ALL	38.05
SOUTH DAKOTA	BUTTE	19.02
	CUSTER	
	FALL RIVER	

STATE	COUNTY	RATE PER ACRE
	LAWRENCE	
	MEAD	
	PENNINGTON	
	ALL OTHER COUNTIES	6.32
SOUTH CAROLINA	ALL COUNTIES	38.05
TENNESSEE	ALL COUNTIES	25.35
TEXAS	CULBERSON	6.32
	EL PASO	
	HUDSPETH	
	ALL OTHER COUNTIES	38.05
UTAH	BEAVER	6.32
	BOX ELDER	
	CARBON	
	DUCHESNE	
	EMERY	
	GARFIELD	
	GRAND	
	IRON	
	JUAB	
	KANE	
	MILLARD	
	SAN JUAN	
	TOOELE	
	UINTAH	
	WAYNE	
	WASHINGTON	12.68
	CACHE	19.02
	DAGGETT	
	DAVIS	
	MORGAN	
	PIUTE	
	RICH	
	SALT LAKE	
	SANPETE	
	SEVIER	
	SUMMIT	
	UTAH	
	WASATCH	
	WEBER	
VERMONT	ALL COUNTIES	25.35
VIRGINIA	ALL COUNTIES	25.35
WASHINGTON	ADAMS	12.68
	ASOTIN	
	BENTON	
	CHELAN	
	COLUMBIA	
	DOUGLAS	
	FRANKLIN	
	GARFIELD	12.68
	GRANT	
	KITTITAS	
	KLICKITAT	
	LINCOLN	
	OKANOGAN	
	SPOKANE	
	WALLA WALLA	
	WHITMAN	
	YAKIMA	
	FERRY	19.02
	PEND OREILLE	
	STEVENS	
	CLALLAM	25.35
	CLARK	
	COWLITZ	
	GRAYS HARBOR	
	ISLAND	
	JEFFERSON	
	KING	
	KITSAP	
	LEWIS	
	MASON	
	PACIFIC	
	PIERCE	

STATE	COUNTY	RATE PER ACRE
	SAN JUAN	
	SKAGIT	
	SKAMANIA	
	SNOHOMISH	
	THURSTON	
	WAHKIAKUM	
	WHATCOM	
WEST VIRGINIA	ALL COUNTIES	25.35
WISCONSIN	ALL COUNTIES	19.02
WYOMING	ALBANY	6.32
	CAMPBELL	
	CARBON	
	CONVERSE	
	GOSHEN	
	HOT SPRINGS	
	JOHNSON	
	LARAMIE	
	LINCOLN	
	NATRONA	
	NIOBRARA	
	PLATTE	
	SHERIDAN	
	SWEETWATER	
	FREMONT	
	SUBLETTE	
	UINTA	
	WASHAKIE	19.02
	BIG HORN	
	CROOK	
	PARK	
	TETON	
	WESTON	
ALL OTHER ZONES		6.35

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 514, and 558

[Docket No. 99N–1591]

Animal Drug Availability Act; Veterinary Feed Directive

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the new animal drug regulations to implement the veterinary feed directive (VFD) drugs section of the Animal Drug Availability Act of 1996 (ADAA). A VFD drug is intended for use in animal feed. Its use is permitted only under the professional supervision of a licensed veterinarian in the course of the veterinarian's professional practice. This new regulation states the requirements for distribution and use of a VFD drug and animal feed containing a VFD drug.

DATES: This rule is effective January 8, 2001.

FOR FURTHER INFORMATION CONTACT: George Graber, Center for Veterinary Medicine (HFV–220), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6651, e-mail: ggraber@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 2, l999 (64 FR 35966), FDA proposed regulations to establish the requirements relating to distribution and use of VFD drugs and animal feeds containing VFD drugs. We provided 90 days for comment on the proposed rule.

Prior to 1996, we had only two options for regulating the distribution of animal drugs: (1) Over-the-counter (OTC), and (2) prescription. However, we determined that certain new animal drugs, vital to animal health, should be approved for use in animal feed, only if these medicated feeds were administered under a veterinarian's order and professional supervision. For example, veterinarians are needed to control the use of certain antimicrobials. This control is critical to reducing unnecessary use of such drugs in animals and to slowing or preventing any potential for the development of bacterial resistance to antimicrobial drugs. Safety concerns relating to difficulty of diagnosis of disease conditions, high toxicity, or other reasons may also dictate that the use of a medicated feed be limited to use by order and under the supervision of a licensed veterinarian.

Regulation of animal drugs for use in medicated feeds under traditional prescription systems has proven unworkable. The prescription legend invokes the application of State pharmacy laws. As a practical matter, the application of State pharmacy laws to medicated feeds would burden State pharmacy boards and impose costs on animal feed manufacturers to such an extent that it would be impractical to make these critically needed new animal drugs available for animal therapy.

After considerable deliberation with, and support from, the Coalition for Animal Health, an organization that represents major sectors of animal agriculture, and with support from State regulatory agencies, Congress enacted legislation in 1996 that amended the Federal Food, Drug, and Cosmetic Act (the act) in ways intended to facilitate the approval and marketing of new

animal drugs and medicated feed. This legislation, the ADAA (Public Law 104–250), among other things, established a new class of restricted feed use drugs that may be distributed without invoking State pharmacy laws (21 U.S.C. 354).

Although statutory controls on the use of VFD drugs are similar in some respects to those for prescription animal drugs regulated under section 503(f) of the act (21 U.S.C. 353(f)), the implementing VFD regulations are tailored to the unique circumstances relating to the manufacture and distribution of medicated animal feeds. This final rule will ensure the protection of public health while enabling animal producers to obtain and use needed drugs as efficiently and cost-effectively as possible.

To date, we have approved one VFD drug, tilmicosin, an antimicrobial approved for administration via animal feed for control of swine respiratory diseases (§ 558.618 (21 CFR 558.618)). The current regulation for tilmicosin, at § 558.618(d)(4), specifies required cautionary labeling for the VFD drug and any feed manufactured from the VFD drug and describes the information that the attending veterinarian must provide as part of the VFD. The proposed cautionary labeling in § 558.6(f) was in substance the same as the tilmicosin cautionary labeling but had minor word differences. To assure consistency in cautionary labeling for tilmicosin and any future VFD drugs, we have revised our proposed cautionary labeling in § 558.6(f) to conform to tilmicosin cautionary language in § 558.618(d)(4). Section 558.618(d)(4) is therefore being removed as its provisions are now a part of this final rule at §§ 558.6(a)(4) [content of VFD] and 558.6(f) [cautionary labeling].

II. Comments on the Proposed Rule

We received eight letters commenting on the proposed rule. One was from a feed manufacturer. The balance were from associations representing the veterinary profession, feed manufacturers, the animal health industry, animal producers, and feed control regulators. Generally, the comments were quite supportive of the VFD concept. Significant issues addressed in the comments involved the means of transmission of VFD's, the length of time a VFD would be valid, the appropriateness of refills or reorders, and our proposed automatic classification of VFD drugs as Category II drugs.

Following is our response to comments, grouped by issue:

A. Transmission of VFD's

(Comment 1) All eight comments mentioned this issue. Comments were evenly split, with the veterinary profession, producers, and drug industry desiring maximum use of paper, facsimile, phone, e-mail, and new technology as it develops. The feed industry and feed control regulators opted for paper copy with the possibility of facsimile transmission with proper safeguards. They did not support phone transmission.

Objections to facsimile and other electronic transmission of VFD's were based on a perceived lack of security of transmitted information, difficulty in substantiating authenticity of the VFD, and ability of the client to forward a VFD to multiple distributors. In the case of phone transmission, comments stressed the possibility of fraudulent orders, risk of error in reducing the order to writing, and the burden placed on the manufacturer/distributor to authenticate the VFD order. One comment stated that the oversight by the veterinarian is the underlying reason that Congress created VFD drugs. The comment contended that this oversight is lost when we allow a VFD feed to be distributed in the absence of a signed, original VFD physically present at the distributor at the time of distribution.

Proponents of the use of a wide range of methods for VFD transmission suggest that distribution would be unnecessarily delayed for lack of a written and signed form physically present at the distributor. Two comments suggested that FDA be open to new innovations in electronic transmission such as a web-based server that would require the use of secure user (veterinarian owned) accounts using user-names, passwords, and electronic signatures. We are not opposed to the use of new innovations and technologies. We would not object to a system that can be demonstrated as being in compliance with applicable regulations and practices that govern such systems.

We believe we must accommodate those situations where prompt hand delivery of a VFD is not possible, but immediate delivery of a VFD feed is necessary. To accomplish this, we will allow transmission by facsimile or other electronic means provided safeguards are in place to prevent misuse. The industry must provide assurances that these technologies, as appropriate, are in compliance with part 11 (21 CFR part 11). Using a computer as a web-based server to create, modify, maintain, or transmit required records as well as using electronic signatures for those records is subject to part 11. It would be up to industry to prove that a system is capable of its intended purpose. Part 11 ''applies to all records in electronic form that are created, modified, maintained, archived, retrieved, or transmitted under record requirements in any of the agency's regulations or records submitted to the agency,'' unless specifically excepted by regulation(s). In order for electronic records to be used in lieu of paper records, they must be in compliance with the provisions stated in § 11.2. These electronic records and signatures, computer systems (including hardware and software), controls, and accompanying documentation must be readily available for and subject to inspection by FDA.

We disagree with the comment that facsimile transmission of the VFD poses a significant problem as the client may reproduce the copy to place multiple orders. While the possibility exists that a client may submit the copy of the VFD to several distributors to obtain additional VFD feed, the distributor will become aware of the irregularity when an original VFD doesn't arrive within 5 days. Such a violation is difficult to hide.

One comment asked who is held responsible, the veterinarian, feeder (client), or feed distributor, if the actual VFD is not properly distributed. While all bear responsibility, the veterinarian is most in control. Thus, we believe it is the veterinarian's obligation to assure that the original VFD is distributed to the feed distributor with the timeliness required by § 558.6(b)(4). The client has responsibility for notifying the veterinarian where to send the original VFD. We recognize there may be instances where a VFD may not be presented to a distributor for several days, and there may be instances where the VFD is issued but never used. If it is determined that a VFD may be refilled, it is possible that the VFD may be required by one distributor first and later by another for refill. In these situations, the client must keep the issuing veterinarian advised when a VFD is moved from one distributor to another, to ensure that the original VFD is moved to the new distributor or a new VFD is issued.

Regarding telephone orders, one comment stated that there is precedence for telephone orders in that veterinarians currently telephone in prescription drug orders. The orders are reduced to writing by the pharmacist without a followup hard copy of the prescription being sent. We do not agree that the situations are the same. The pharmacist who fills a prescription has

extensive training in drug use and potential misuse. Further, a limited amount of information is required in a typical prescription order. Conversely, an extensive amount of information is required in a VFD. A feed mill employee, while skilled in manufacturing feed, may not have the necessary skills to routinely assure a complete and accurate transmission of a VFD or to recognize a potentially inaccurate VFD order. We believe that allowing a telephone order to the feed mill would jeopardize the integrity of the VFD process. Therefore, we have not included telephone orders as an option for transmitting a VFD and have added § 558.6(b)(5) to state that a VFD may not be transmitted by phone.

B. Refills and Length of Time VFD is Valid

(Comment 2) One comment suggested that FDA determine whether refills or reorders are appropriate. Another comment suggested that the veterinarian should be allowed to determine when refills or reorders are necessary. Two comments stated that a single VFD could cover multiple production groups when a disease outbreak is anticipated in subsequent groups of animals passing through a production facility. Concerning the length of time a VFD is valid, two comments stated that the VFD should be valid for up to 6 months. Two other comments stated the opinion that the duration of a VFD should be determined on a case-by-case basis as part of the VFD drug approval process.

We believe that there are situations when refills and expiration dates, possibly of several months, are appropriate to medicate multiple production groups and provide efficient treatment of sick animals. We further believe that allowances of this type will vary considerably depending on the drug and its use. Since we cannot predict what types of drugs and disease situations will be presented in the future, the issues of refills and reorders and the duration of time a VFD can be valid need to be considered on a drug-by-drug basis as part of the new animal drug approval process. We recognize this could result in different conditions for different VFD drugs, which is additional support for the role of the professional (veterinarian) and the need for a complete VFD. Therefore, we have not attempted to specify the allowable number of refills or reorders, or the duration of time a VFD can be valid. This will be dealt with when the new animal drug application (NADA) for the VFD drug is reviewed during the approval process.

C. Classification of VFD Drugs as Category II Drugs

(Comment 3) Two comments asked that we reexamine our decision to automatically classify VFD drugs as Category II drugs. We continue to believe that classifying VFD drugs as Category II drugs is appropriate. Classifying a drug as Category II adds additional regulatory controls because feed manufacturing facilities must possess a medicated feed mill license and be registered with FDA in order to manufacture a Type B or Type C medicated feed from a Category II, Type A medicated article. Registered feed mills are required to be inspected at least every 2 years. Such inspections will help the agency ensure that VFD requirements are met.

Therefore, our decision to automatically classify VFD drugs as Category II drugs remains and is so reflected in the final rule.

D. Responses to Remaining Comments

(Comment 4) Two comments suggested that the ''notification letter'' of proposed § 558.6(d)(1) and the ''acknowledgment letter'' of § 558.6(d)(2) be combined into a single letter to reduce the paperwork burden. We are unable to agree to this because these letters serve different purposes and are sent to different entities. The notification letter is sent by the distributor to FDA to notify the agency that the distributor has begun distributing VFD feeds. In contrast, the acknowledgment letter is sent to the distributor by a purchaser stating that it will sell the VFD feed only to a producer with a valid VFD, or to another distributor who provides a similar acknowledgment letter.

We are, however, combining § 558.6(d)(2)(i) and (d)(2)(ii) of the proposed rule, which required in paragraph (d)(2)(i) that a distributor obtain an acknowledgment letter and in paragraph (d)(2)(ii) that a distributor obtain a statement affirming that a consignee-distributor has complied with ''distributor notification'' requirements. Both requirements may now be met in a single letter under § 558.6(d)(2).

(Comment 5) Two comments asked for other changes in the VFD. One comment asked that § 558.6(a)(3) be changed to read: ''You must complete all of the information required on the VFD in writing, and sign it; VFD's that contain incomplete information will be considered invalid.'' A similar comment asked that we consider as unacceptable a VFD that is not filled out completely. We agree with these suggestions and have incorporated them into § 558.6(a)(3) and (a)(4) in the final rule.

(Comment 6) Two comments asked that the VFD drug sponsor provide VFD forms in triplicate to the veterinarian and that the veterinarian be required to use them. We agree with this comment in part. We addressed it in the proposed rule by revising the new animal drug regulations at § 514.1(b)(9) (21 CFR 514.1(b)(9)) to require the sponsor of a VFD drug to include in the NADA a format for a VFD form as described in § 558.6(a)(4) of this regulation. One comment additionally suggested that using the VFD drug sponsor's VFD form would eliminate the problem of partially completed forms generated by a veterinarian. While we have not made it mandatory that the VFD drug sponsor provide copies of this form for use by the veterinary profession, we believe that they will make the forms available in triplicate for the sake of efficiency and completeness of the veterinarian's VFD transmissions. Nevertheless, we continue to give the veterinarian the option of creating his/her own VFD.

(Comment 7) One comment asked that we clarify what we mean by the term ''immediately'' in § 558.6(b)(4), relating to length of time a veterinarian has to provide the signed original VFD to the distributor as followup to a facsimile or electronic transmission. One comment suggested that we use the term ''promptly.'' Another comment suggested that the time be 24 hours. We have revised the regulation to read, ''the distributor receives the original signed VFD within 5 working days of receipt of the facsimile or other electronic order.'' We feel this is sufficient time for the client to place the order and the distributor to receive the signed original mailed by the veterinarian.

Additionally, a comment suggested that the client should not be required to wait to receive the VFD medicated feed until the distributor receives the original VFD. We agree, but to alleviate concern that a client may receive medicated feed containing a VFD drug without receiving a copy of the VFD, we have added § 558.6(c)(4) that reads: ''All involved parties must have a copy of the VFD before distribution of a VFD feed to the ultimate user.'' The copy need not be an original and may be transmitted by facsimile or other electronic means.

(Comment 8) One comment recommended that the facsimile of the VFD order be on company letterhead. We anticipate that when veterinarians do not use the VFD drug sponsor's VFD, they will be issuing the VFD on their or their own firm's stationary. However, even if they do not use letterhead paper, the veterinarian is required to include

his/her name (and signature), address, and license number on the VFD. Therefore, we do not think it is necessary to require them to use company stationary.

(Comment 9) One comment objected to our inclusion of VFD drugs in § 510.300(a)(4) (21 CFR 510.300(a)(4)) because doing so would essentially confer prescription drug status on VFD drugs for submission of promotional materials. Proposed modifications to § 510.300 do not make a VFD drug a prescription drug. Section 504(c) of the act (21 U.S.C. 354(c)) states that VFD drugs cannot be prescription articles. Section 504(b) of the act establishes misbranding criteria for both labeling and advertising for VFD's. Thus, routine requirements for submitting advertising for VFD drug experience reports under § 510.300(a)(4) should be the same as requirements for submitting labeling. We have not changed the proposed provision in the final rule.

(Comment 10) One comment suggested that FDA consider a provision to revoke a veterinarian's right to order use of VFD drugs if the veterinarian fails to have a valid veterinarian-client-patient relationship (VCPR) or fails to provide complete VFD information to the feed distributor. Normally, this type of action would be handled by State veterinary license authorities. However, the act does provide FDA with other regulatory options.

Section 504 of the act states "* * * When labeled, distributed, held, and used in accordance with this section, a veterinary feed directive drug and any animal feed bearing or containing a veterinary feed directive drug shall be exempt from section 502(f) [of the act]." Under section 502(f) of the act (21 U.S.C. 352(f)) a drug or device is misbranded unless its labeling bears adequate directions for lay use. (See 21 CFR 201.5.)

VFD drugs and animal feed bearing or containing veterinary feed directive drugs are exempt from the statutory requirements for adequate directions for lay use only when they are distributed under a VFD issued by a licensed veterinarian within the confines of a valid VCPR and contain complete and accurate information as required by § 558.6.

If the order for a VFD drug is not based upon a valid VCPR or fails to provide complete information as required by § 558.6, then the VFD drug is subject to section 502(f) of the act. Since a VFD drug, by its very nature, cannot bear adequate directions for lay use, a VFD drug subject to 502(f) of the act is misbranded and the veterinarian who issued the VFD may be held responsible for causing the misbranding of the VFD drug or the feed containing the VFD drug in violation of the act.

We have made nonsubstantive wording and restructuring changes to §§ 514.1(b)(9), 558.3(b)(6), and 558.6(a)(2), (c)(1), (c)(2), and (c)(3) for the sake of clarity.

III. Conforming Changes

FDA has made conforming changes to §§ 514.1(b)(9) and 510.300, and is removing § 558.618(d)(4).

IV. Environmental Impact

We have carefully considered the potential environmental effects of this final rule and have determined that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies 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. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

VI. Analysis of Impacts

We have examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We believe that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities unless the rule is not expected to have a significant impact on a substantial number of small entities. As this final rule will not impose significant new costs on any firms under the Regulatory Flexibility Act (5 U.S.C. 605(b)), we certify that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VII. Unfunded Mandates Reform Act of 1995

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of the anticipated costs and benefits before requiring any expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation).

The Unfunded Mandates Reform Act of 1995 does not require FDA to prepare a statement of costs and benefits for the final rule, because the rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is $110 million.

VIII. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given below. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Animal Drug Availability Act; Veterinary Feed Directive

Description: FDA is publishing this final rule to implement provisions of the ADAA which, by adding section 504 to the act, created a new class of animal drugs called VFD drugs. This final rule establishes regulatory requirements for the distribution and use of VFD drugs. VFD drugs are new animal drugs intended for use in or on animal feed whereby such use is permitted only under the professional supervision of a licensed veterinarian operating within the confines of a valid VCPR.

The VFD ordered by the veterinarian must be issued in accordance with the format described under § 558.6(a). We are amending the new animal drug regulations at § 514.1(b)(9) to require the VFD drug sponsor to submit such format as part of the NADA. The format may be used by the sponsor to produce forms in triplicate for use by the veterinarian or it may be supplied to the veterinarian for use in preparing a practice-specific form. Veterinarians are required to complete the VFD in triplicate, authorizing a client-recipient to obtain and use a medicated feed containing a VFD drug. The original copy of the VFD must be forwarded either by the veterinarian or the client-recipient to the distributor providing the VFD. In addition, the veterinarian issuing the VFD and the client-recipient of the VFD must retain a copy of each VFD for 2 years from date of issuance. Any person who distributes medicated feed containing VFD drugs must file with us a one time notification letter of intent to distribute, and retain a copy of each VFD serviced or each consignee's acknowledgment letter for 2 years. Distributors are also required to keep records of receipt and distribution of medicated animal feeds containing VFD drugs for 2 years. An acknowledgment letter must be provided to a distributor by a consignee who is not the ultimate user of the medicated feed containing a VFD drug. The acknowledgment letter affirms that the consignee will not ship such medicated animal feed to an animal production facility that does not have a VFD, and will not ship such feed to another distributor without receiving a similar acknowledgment letter. To maintain an accurate data base for distributors of VFD drugs, a distributor is required to notify us of any change in name or business address.

In response to a comment, we combined § 558.6(d)(2)(i) and (d)(2)(ii) of the proposed rule, which required in paragraph (d)(2)(i) that a distributor obtain an acknowledgment letter and in paragraph (d)(2)(ii) that a distributor obtain a statement affirming that a consignee-distributor has complied with ''distributor notification'' requirements. Both requirements may now be met in a single letter under § 558.6(d)(2). This change does not entail a substantive modification to the reporting burden, so the estimates in table 1 of this document have not changed.

Description of Respondents: Veterinarians, distributors of animal feeds containing VFD drugs, and clients using medicated feeds containing VFD drugs. In the **Federal Register** of July 2, 1999 (64 FR 35966), FDA requested comments on the proposed collection of information. No comments were received on the estimated annual burdens. The annual burden estimates therefore remain unchanged.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
558.6(a)(3) through (a)(5)	15,000	25	375,000	0.25	93,750
558.6(d)(1)(i) through (d)(1)(iii)	5,000	1	5,000	0.25	1,250
558.6(d)(1)(iv)	100	1	100	0.25	25
558.6(d)(2)	5,000	1	5,000	0.25	1,250
514.1(b)(9)	1	1	1	3	3
Total Hours					96,278

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
558.6(c)(1) and (d)(2)	112,500	10	1,125,000	0.0167	18,788
558.6(e)(ii)	5,000	75	375,000	0.0167	6,263
Total Hours					25,051

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Individuals and organizations may submit comments on this burden estimate or on any other aspect of these information collection provisions, including suggestions for reducing the burden, and should direct them to George Graber, Center for Veterinary Medicine (HFV–220), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. The information collection provisions in this final rule have been approved under OMB control number 0910–0363. This approval expires October 31, 2002. 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.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 514

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 510, 514, and 558 are amended to read as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.300 [Amended]

2. Section 510.300 *Records and reports concerning experience with new animal drugs for which an approved application is in effect* is amended in

paragraph (a)(4) by adding the phrase ''or a veterinary feed directive drug'' following ''if it is a prescription new animal drug''.

PART 514—NEW ANIMAL DRUG APPLICATIONS

3. The authority citation for part 514 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360b, 371, 379e, 381.

4. Section 514.1 is amended by adding paragraph (b)(9) to read as follows:

§ 514.1 Applications.

* * * * *

(b) * * *

(9) *Veterinary feed directive.* Three copies of a veterinary feed directive (VFD) must be submitted in the format described under § 558.6(a)(4) of this chapter.

* * * * *

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

5. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

6. Section 558.3 is amended by revising paragraph (b)(1)(ii) and by adding paragraphs (b)(6) through (b)(11) to read as follows:

§ 558.3 Definitions.

* * * * *

(b) * * *

(1) * * *

(ii) Category II—These drugs require a withdrawal period at the lowest use level for at least one species for which they are approved, or are regulated on a ''no-residue'' basis or with a zero tolerance because of a carcinogenic concern regardless of whether a withdrawal period is required, or are a veterinary feed directive drug.

* * * * *

(6) A ''veterinary feed directive (VFD) drug'' is a new animal drug approved under section 512(b) of the Federal Food, Drug, and Cosmetic Act (the act) for use in or on animal feed. Use of a VFD drug must be under the professional supervision of a licensed veterinarian.

(7) A ''veterinary feed directive'' is a written statement issued by a licensed veterinarian in the course of the veterinarian's professional practice that orders the use of a veterinary feed directive (VFD) drug in or on an animal feed. This written statement authorizes the client (the owner of the animal or animals or other caretaker) to obtain and use the VFD drug in or on an animal feed to treat the client's animals only in accordance with the directions for use approved by the Food and Drug Administration (FDA). A veterinarian may issue a VFD only if a valid veterinarian-client-patient relationship exists, as defined in § 530.3(i) of this chapter.

(8) A ''medicated feed'' means a Type B medicated feed as defined in paragraph (b)(3) of this section or a Type C medicated feed as defined in paragraph (b)(4) of this section.

(9) For the purposes of this part, a ''distributor'' means any person who distributes a medicated feed containing a VFD drug to another distributor or to the client-recipient of the VFD.

(10) An ''animal production facility'' is a location where animals are raised for any purpose, but does not include the specific location where medicated feed is made.

(11) An ''acknowledgment letter'' is a written communication provided to a distributor by a consignee who is not the ultimate user of medicated feed containing a VFD drug. An acknowledgment letter affirms that the consignee will not ship such medicated animal feed to an animal production facility that does not have a VFD, and will not ship such feed to another distributor without receiving a similar written acknowledgment letter.

7. Section 558.6 is added to subpart A to read as follows:

§ 558.6 Veterinary feed directive drugs.

(a) What conditions must I meet if I am a veterinarian issuing a veterinary feed directive (VFD)?

(1) You must be appropriately licensed.

(2) You must issue a VFD only within the confines of a valid veterinarian-client-patient relationship (see definition at § 530.3(i) of this chapter).

(3) You must complete the VFD in writing and sign it or it will be invalid.

(4) You must include all of the following information in the VFD or it will be invalid:

(i) You and your client's name, address and telephone and, if the VFD is faxed, facsimile number.

(ii) Identification and number of animals to be treated/fed the medicated feed, including identification of the species of animals, and the location of the animals.

(iii) Date of treatment, and, if different, date of prescribing the VFD drug.

(iv) Approved indications for use.

(v) Name of the animal drug.

(vi) Level of animal drug in the feed, and the amount of feed required to treat the animals in paragraph (a)(4)(ii) of this section.

(vii) Feeding instructions with the withdrawal time.

(viii) Any special instructions and cautionary statements necessary for use of the drug in conformance with the approval.

(ix) Expiration date of the VFD.

(x) Number of refills (reorders) if necessary and permitted by the approval.

(xi) Your license number and the name of the State issuing the license.

(xii) The statement: ''Extra-label use, (i.e., use of this VFD feed in a manner other than as provided for in the VFD drug approval) is strictly prohibited.''

(xiii) Any other information required by the VFD drug approval regulation.

(5) You must produce the VFD in triplicate.

(6) You must issue a VFD only for the approved conditions and indications for use of the VFD drug.

(b) What must I do with the VFD if I am a veterinarian?

(1) You must give the original VFD to the feed distributor (directly or through the client).

(2) You must keep one copy of the VFD.

(3) You must give the client a copy of the VFD.

(4) You may send a VFD to the client or distributor by facsimile or other electronic means provided you assure that the distributor receives the original signed VFD within 5 working days of receipt of the facsimile or other electronic order.

(5) You may not transmit a VFD by telephone.

(c) What are the VFD recordkeeping requirements?

(1) The VFD feed distributor must keep the VFD original for 2 years from the date of issuance. The veterinarian and the client must keep their copies for the same period of time.

(2) All involved parties must make the VFD available for inspection and copying by FDA.

(3) All involved parties (the VFD feed distributor, the veterinarian, and the client) must keep VFD's transmitted by facsimile or other electronic means for a period of 2 years from date of issuance.

(4) All involved parties must have a copy of the VFD before distribution of a VFD feed to the ultimate user.

(d) What are the notification requirements if I am a distributor of animal feed containing a VFD drug?

(1) You must notify FDA only once, by letter, that you intend to distribute animal feed containing a VFD drug.

(i) The notification letter must include the complete name and address of each business site from which distribution will occur.

(ii) A responsible person from your firm must sign and date the notification letter.

(iii) You must submit the notification letter to the Center for Veterinary Medicine, Division of Animal Feeds (HFV–220), 7500 Standish Pl., Rockville, MD 20855, prior to beginning your first distribution.

(iv) You must notify the Center for Veterinary Medicine at the above address within 30 days of any change in name or business address.

(2) If you are a distributor who ships an animal feed containing a VFD drug to another consignee-distributor in the absence of a valid VFD, you must obtain an ''acknowledgment letter,'' as defined in § 558.3(b)(11), from the consignee-distributor. The letter must include a statement affirming that the consignee-distributor has complied with ''distributor notification'' requirements of paragraph (d)(1) of this section.

(e) What are the additional recordkeeping requirements if I am a distributor?

(1) You must keep records of receipt and distribution of all medicated animal feed containing a VFD drug.

(2) You must keep these records for 2 years from date of receipt and distribution.

(3) You must make records available for inspection and copying by FDA.

(f) What cautionary statements are required for VFD drugs and animal feeds containing VFD drugs? All labeling and advertising must prominently and conspicuously display the following cautionary statement: ''Caution: Federal law limits this drug to use under the professional supervision of a licensed veterinarian. Animal feed bearing or containing this veterinary feed directive drug shall be fed to animals only by or upon a lawful veterinary feed directive issued by a licensed veterinarian in the course of the veterinarian's professional practice.''

§ 558.618 [Amended]

8. Section 558.618 *Tilmicosin* is amended by removing paragraph (d)(4).

Dated: November 30, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31151 Filed 12–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 556

Tolerances for Residues of New Animal Drugs in Food; Moxidectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is updating the animal drug regulations to correctly reflect the tolerance for moxidectin in cow's milk. This document amends the regulations to state the correct tolerance is 40 parts per billion (ppb). This action is being taken to improve the accuracy of the agency's regulations. Changes to a current format are also being made.

DATES: This rule is effective December 8, 2000.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578.

SUPPLEMENTARY INFORMATION: Moxidectin solution is approved for topical use in cattle for the treatment and control of infections and infestations of certain internal and external parasites. When the November 2, 1999, approval of the use of moxidectin in lactating dairy cows was published in the **Federal Register** of June 9, 2000 (65 FR 36616), the tolerance for parent moxidectin in the milk of cattle was incorrectly listed. At this time, the regulations are being amended in 21 CFR 556.426 to state the correct tolerance is 40 ppb and, editorially, to reflect current format.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 556 is amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

2. Section 556.426 is amended by revising paragraph (b) to read as follows:

§ 556.426 Moxidectin.

* * * * *

(b) *Tolerances*—(1) *Cattle*—(i) *Liver (the target tissue)*. The tolerance for parent moxidectin (the marker residue) is 200 parts per billion (ppb).

(ii) *Muscle*. The tolerance for parent moxidectin (the marker residue) is 50 ppb.

(iii) *Milk*. The tolerance for parent moxidectin (the marker residue in cattle milk) is 40 ppb.

(2) [Reserved]

Dated: November 29, 2000.

David R. Newkirk,

Acting Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 00–31248 Filed 12–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 876

[Docket No. 00P–1343]

Medical Device; Exemption From Premarket Notification; Class II Devices; Barium Enema Retention Catheters and Tips With or Without a Bag

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is publishing an order granting a petition requesting exemption from the premarket notification requirements for barium enema retention catheters and tips with or without a bag with certain limitations. This rule will exempt from premarket notification barium enema retention catheters and tips with or without a bag. FDA is publishing this order in accordance with procedures established by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: This rule is effective December 8, 2000.

FOR FURTHER INFORMATION CONTACT: Linda L. Dart, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1220.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (the 1976 amendments (Public Law 94–295)), as amended by the Safe Medical Devices Act of 1990 (the SMDA (Public Law 101–629)), devices are to be classified into class I (general controls) if there is information showing that the general controls of the act are sufficient to assure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a device into class I or class II and the device is a life-sustaining or life-supporting device or is for a use that is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976, (generally referred to as postamendments devices) are classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations (21 CFR part 807) require persons who intend to market a new device to submit a premarket notification report (510(k)) containing information that allows FDA to determine whether the new device is ''substantially equivalent'' within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law FDAMA (Public Law 105–115). Section 206 of FDAMA, in part, added a new section 510(m) to the act. Section 510(m)(1) of the act requires FDA, within 60 days after enactment of FDAMA, to publish in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142).

Section 510(m)(2) of the act provides that 1 day after date of publication of the list under section 510(m)(1) of the act, FDA may exempt a device on its own initiative or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the guidance that the agency issued on February 19, 1998, entitled ''Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff.'' That guidance can be obtained through the Internet on the CDRH home page at http://www.fda.gov/cdrh or by facsimile through CDRH Facts-on-Demand at 1–800–899–0381 or 301–827–0111. Specify ''159'' when prompted for the document shelf number.

III. Petition

On June 13, 2000, FDA received a petition requesting an exemption from premarket notification for the barium enema retention catheters and tips with or without a bag. Barium enema retention catheters and tips with or without a bag are currently classified under 21 CFR 876.5980 as a gastrointestinal tube and accessory. In the **Federal Register** of August 8, 2000 (65 FR 48527), FDA published a notice announcing that this petition had been received and providing opportunity for interested persons to submit comments on the petition by September 7, 2000. FDA received no comments. FDA has reviewed the petition and has determined that barium enema retention catheters and tips with or without a bag used as a gastrointestinal tube and accessory meet the criteria for exemption from the notification requirements. The exemption is limited to barium enema retention catheters and tips with or without a bag, as described, and is also subject to the general limitations on exemptions from premarket notification for therapeutic devices as described in 21 CFR 876.9. FDA also notes that all latex containing devices, including barium enema retention catheters and tips with or without a bag, and other devices that are exempt from the premarket notification requirements of the act, are subject to the labeling regulation found in 21 CFR 801.437 (User labeling for devices that contain natural rubber).

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule will relieve a burden and simplify the marketing of these devices, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rules does not contain policies 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. Accordingly, the agency has concluded that the rules does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 876 is amended as follows:

PART 876—GASTROENTEROLOGY—UROLOGY DEVICES

1. The authority citation for 21 CFR part 876 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

2. Section 876.5980 is amended by revising paragraph (b)(1) to read as follows:

§ 876.5980 Gastrointestinal tube and accessories.

* * * * *

(b) *Classification.* (1) Class II (special controls). The barium enema retention catheter and tip with or without a bag that is a gastrointestinal tube and accessory is exempt from the premarket notification procedures in subpart E of this part subject to the limitations in § 876.9.

* * * * *

Dated: December 3, 2000.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 00–31292 Filed 12–7–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8889]

RIN 1545–AV10

Guidance Regarding Claims for Certain Income Tax Convention Benefits; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations (TD 8889) which were published in the **Federal Register** on Monday, July 3, 2000 (65 FR 40993). The final regulations relate to claims for certain income tax convention benefits.

DATES: This correction is effective July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Shawn R. Pringle (202) 622–3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under section 894 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 8889) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (TD 8889),which was the subject of FR Doc. 00–16761, is corrected as follows:

1. On page 40996, column 2, in the preamble under the paragraph heading ''D. Treatment of Complex Trusts'', paragraph 2, line 13 from the bottom of the paragraph, the language ''the hands of the interest holder are'' is corrected to read ''the hands of the interest holder are not''.

2. One page 40997, column 1, in the preamble under the paragraph heading ''Special Analyses'', paragraph 1, line 2, the language ''treasury decision not a significant'' is corrected to read ''Treasury decision is not a significant''.

§ 1.894–1 [Corrected]

3. On page 40997, column 1, correct the amendatory instruction for Par. 2. to read as follows:

Par. 2. Section 1.894–1 is amended as follows:

1. Paragraph (d) is redesignated as paragraph (e), and a new paragraph (d) is added.

2. In newly designated paragraph (e), add a sentence at the end of the paragraph.

The additions read as follows:

4. On page 40999, column 2, § 1.894–1(d)(5), paragraph (i) of *Example 7.,* line 10, the language ''legal personality of the arrangement, A is not'' is corrected to read ''legal personality in Country X of the arrangement, A is not''.

5. On page 40999, column 2, § 1.894–1(d)(5), paragraph (i) of *Example 7.,* lines 11 and 12, the language ''liable to tax at the entity level of Country X and is not a resident within the meaning of'' is corrected to read ''liable to tax as a person at the entity level in Country X and is thus not a resident within the meaning of''.

6. On page 40999, column 2, § 1.894–1(d)(5), paragraph (ii) of *Example 7.,* line 9, the language ''is not considered a resident of Country X'' is corrected to read ''is not considered a person in Country X and thus not a resident of Country X''.

7. On page 40999, column 2, § 1.894–1(d)(5), paragraph (ii) of *Example 7.,* line 12, the language ''derive the income for purposes of the U.S.-'' is corrected to read ''derive the income as a resident of Country X for purposes of the U.S.-''.

8. On page 41000, column 1, § 1.894–1(d)(5), paragraph (i) of *Example 11.,* the last line of the paragraph, the language ''subject to tax by Country X.'' is corrected to read ''taxed by Country X.''.

9. On page 41000, column 2, § 1.894–1, after paragraph (d)(6), add a sentence at the end of paragraph (e) to read as follows:

§ 1.894–1 Income affected by treaty.

* * * * *

(e) * * * See paragraph (d)(6) of this section for applicability dates for paragraph (d) of this section.

10. On page 41000, column 2, a new amendatory instruction Par. 3. is added to read as follows:

§ 1.894–1T [Removed]

Par. 3. Section 1.894–1T is removed.

Cynthia E. Grigsby,

Chief, Regulations Unit, Office of Special Counsel (Modernization & Strategic Planning).

[FR Doc. 00–31255 Filed 12–7–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC66

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Update of Documents Incorporated by Reference—API Specification 14A, Tenth Edition

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: MMS is updating one document incorporated by reference in regulations governing oil and gas and sulphur operations in the Outer Continental Shelf (OCS). The new edition of this document incorporated by reference will ensure that lessees use the best available and safest technologies while operating in the OCS. The updated document, issued by the American Petroleum Institute (API), is API Specification 14A, Tenth Edition, November 2000, ISO 10432:1999, Petroleum and natural gas industries—Downhole equipment—Subsurface safety valve equipment, Stock No. G14A09.

DATES: This rule is effective January 8, 2001. The incorporation by reference of publications listed in the regulation is approved by the Director of the Federal Register as of January 8, 2001.

FOR FURTHER INFORMATION CONTACT: Fred Gray, Operations Analysis Branch, at (703) 787–1027.

SUPPLEMENTARY INFORMATION: We use standards, specifications, and recommended practices developed by standard-setting organizations and the oil and gas industry for establishing requirements for activities in the OCS. This practice, known as incorporation by reference, allows us to incorporate the provisions of technical standards into the regulations without increasing the volume of the Code of Federal Regulations (CFR). The legal effect of incorporation by reference is that the material is treated as if it was published in the **Federal Register**. This material, like any other properly issued regulation, then has the force and effect of law. We hold operators/lessees accountable for complying with the documents incorporated by reference in our regulations. The regulations found at 1 CFR part 51 govern how MMS and other Federal agencies incorporate various documents by reference. Agencies can only incorporate by reference through publication in the **Federal Register**. Agencies must also gain approval from the Director of the Federal Register for each publication incorporated by reference. Incorporation by reference of a document or publication is limited to the specific edition or specific edition and supplement or addendum cited in the regulations.

The International Organization for Standardization (ISO) is a worldwide federation of national standards bodies (ISO member bodies). Founded in the mid-1940's, ISO is a non-profit agency based in Geneva, Switzerland, whose purpose is to promote the development of international standards and related activities to facilitate the global exchange of goods and services. The American National Standards Institute (ANSI) is the official United States member body to ISO.

The work of preparing international standards is normally carried out through an ISO technical committee (TC). Each member body interested in a subject for which a TC has been established has the right to be represented on that committee. ANSI relies on various United States trade and industry associations, such as the API, for support on industry-specific standards. This standard was developed by ISO/TC 67, ''Materials, equipment and offshore structures for petroleum and natural gas industries.'' API has been appointed by ANSI to administer the US ISO/TC 67 delegation, known as the US Technical Advisory Group (US TAG). MMS has been an active participant in the US TAG since August 1998.

This second edition of the international standard cancels and replaces the first edition (ISO 10432:1993) and includes the changes in the similar API standard, API specification 14A, Ninth Edition, 1994, and its supplement dated December 15, 1997. ISO 10432:1999 was released as a Final Draft International Standard (FDIS) on June 3, 1999. Voting to advance the FDIS to a full international standard occurred on August 3, 1999, and the standard was published as an international standard in November 1999.

ISO permits a national adoption of its international standards with or without the inclusion of regional-specific annexes to account for regional or local conditions. The API procedures to effect the adoption of this international standard with a regional annex included a balloting and comment period to ensure consensus among users, manufacturers, regulatory agencies, and other interested parties. API balloting of the international standard with U.S. annexes, including an annex addressing the API quality specification and an independent test agency, occurred on June 9, 2000, and the API version of the international standard was published in October 2000.

This standard was formulated to provide the minimum acceptable requirements for subsurface safety valve (SSSV) equipment—the SSSV is a downhole safety device used to shut off flow of oil and gas in the event of an emergency. MMS views this important piece of equipment as the last opportunity to secure the well and/or prevent pollution of the environment. The standard covers SSSVs, safety valve locks, safety valve landing nipples, and all components that establish tolerances and/or clearances that may affect performance or interchangeability of the SSSV equipment.

We currently incorporate by reference the ninth edition (July 1994) of API specification 14A, without Supplement 1. Until now, we have not included API Specification 14A, Supplement 1, in the documents incorporated by reference in our regulations. Among other things, API Specification 14A, Supplement 1, deleted a 3-year requalification test requirement for SSSVs.

We have been involved in a series of meetings and discussions with oil and gas operating companies, representatives of oil and gas associations, equipment manufacturers, quality assurance auditors, independent third-party testing and research facilities, and MMS offshore inspectors to consider the relative merits of the 3-year requalification test requirement. We specifically requested public comment on the potential impacts of deleting the 3-year requalification testing requirement for SSSVs in the Notice of Proposed Rulemaking (65 FR 9232) published in the **Federal Register** on February 24, 2000. Comments were also sought on the suitability of including an international standard among the documents incorporated by reference in our regulations.

In response to our request for public comment on the 3-year requalification test requirement, we received five comments supportive of deleting the 3-

year requalification test requirement and two comments that did not support deletion of the 3-year requalification test requirement. Comments were received from three oil and gas associations, three equipment manufacturers, and one test agency. We have considered all the comments received in our analysis, and have determined that the newly issued API version of the international standard, which does not include a 3-year requalification test requirement, should be incorporated into the MMS regulations. Comments were also generally in favor of using the API standard in lieu of the international standard since the API standard contained the regionally specific annexes appropriate for OCS use.

Procedural Matters

This is a very simple rule to update one document previously incorporated by reference. The addition of the new document, API Specification 14A, Tenth Edition, ISO 10432:1999, Petroleum and natural gas industries—Downhole equipment—Subsurface safety valve equipment, will not have a significant effect on any offshore lessee/operator (small or large). One entity, which serves as the only independent test agency for initial design verification testing and 3-year requalification testing, will be negatively affected by the deletion of the 3-year requalification test requirement. Four U.S. manufacturers, with six U.S. facilities manufacturing SSSVs, will benefit from the elimination of costs associated with the 3-year requalification test requirement.

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

The rule would have no significant economic impact because the document does not contain any significant revisions that will cause lessees or operators to change their business practices. The document will not require the retrofitting of any facilities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act (RF Act)

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). The Small Business Administration (SBA) defines a small business as having:

- Annual revenues of $5 million or less for exploration service and field service companies.
- Fewer than 500 employees for drilling companies and for companies that extract oil, gas, or natural gas liquids.

Incorporating the new document into MMS regulations would allow SSSVs with design verification approval to be manufactured and placed into service without the need for a requalification test every 3 years. Thus, incorporating the new document will not impose new costs on the offshore oil and gas industry but rather may reduce costs to the industry in that manufacturers of SSSVs will not incur the costs of a requalification test every 3 years.

Incorporating the new document will also not impose new costs on the manufacturers of the offshore equipment, as previously stated. There are four U.S. companies that manufacture SSSVs for service on the OCS, none of whom could be classified as a small entity, who will benefit from cost savings attributable to the deletion of the 3-year requalification test requirement.

The test agency that will be negatively affected by the deletion of the 3-year requalification test requirement is an independent, nonprofit, applied research and development organization. The test agency has recently reported annual revenues in excess of $300 million and employment of over 2500 staff. The test agency does not qualify as a small entity.

The Department also determined that the indirect effects of this rule on small entities that provide other support functions for offshore activities are insignificant (in effect zero).

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), SBREFA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. The proposed rule will not cause any significant costs to lessees or operators. The only costs will be the purchase of the new document and revisions to some operating procedures. The revisions to operating procedures will actually result in significant costs savings, in that manufacturers of SSSVs will not incur the costs of a requalification test every 3 years.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Federalism (Executive Order 13132)

According to Executive Order 13132, this rule does not have Federalism implications. The rule does not substantially and directly affect the relationship between the Federal and State governments because it concerns the manufacturing requirements for specific equipment used in offshore oil and gas wells. The rule only affects manufacturers and users of such equipment. This rule does not impose costs on States or localities, as it only affects manufacturers and users of specific equipment used in offshore oil and gas wells.

Takings Implication Assessment (Executive Order 12630)

According to Executive Order 12630, this rule does not have significant Takings Implications. MMS determined this rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implications Assessment is not required under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and

meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA is not required.

Paperwork Reduction Act of 1995

There are no information collection requirements associated with this rule.

Unfunded Mandates Reform Act (UMRA) of 1995

This rule does not impose an unfunded mandate on State, local, and tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: November 14, 2000.

Sylvia Baca,

Assistant Secretary, Land and Minerals Management.,

For the reasons stated in the preamble, the Minerals Management Service amends 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for 30 CFR part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

2. In § 250.198, in the table in paragraph (e), the entry for ''API Spec 14A'' is revised to read as follows:

§ 250.198 Documents incorporated by reference.

* * * * *

(e) * * *

Title of documents	Incorporated by reference at
* * * * * * *	
API Spec 14A, Tenth Edition, November 2000, ISO10432:1999, Petroleum and Natural Gas Industries—Downhole Equipment—Subsurface Safety Valve Equipment, API Stock No. G14A09.	§ 250.806(a)(3).
* * * * * * *	

3. In § 250.806, the last sentence in paragraph (a)(3) is revised and new paragraph (a)(4) is added to read as follows:

§ 250.806 Safety and pollution prevention equipment quality assurance requirements.

(a) * * *

(3) * * * All SSSVs must meet the technical specifications of API Specification 14A.

(4) For information on all standards mentioned in this section, see § 250.198.

* * * * *

[FR Doc. 00–30694 Filed 12–7–00; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–00–106]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Mile 1084.6, Miami, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule with request for comments.

SUMMARY: Commander, Seventh Coast Guard District is temporarily changing the regulations governing the West 79th Street Causeway Bridge, mile 1084.6 across the Atlantic Intracoastal Waterway at Miami, Florida. This temporary rule establishes scheduled openings on the hour and half hour, Monday through Saturday, from 7 a.m. to 6:30 p.m., and allows the bridge to remain closed from 7:30 a.m. to 9:30 a.m. and 4:30 p.m. to 6:30 p.m., Monday through Friday. The drawbridge will open on demand during all other periods including federal holidays and Sundays. This action is necessary to facilitate drawbridge rehabilitation to resolve related vehicle traffic flow problems during rush hour.

DATES: This rule is effective from November 21, 2000, to February 28, 2001. Comments must be received by December 31, 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 [CGD07–00–106] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S. E. 1st Avenue, Room 406, Miami, FL 33131, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, at (305) 415–6730.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM is impracticable and contrary to the public interest because rehabilitation is underway.

Further, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Rehabilitation is underway and a delayed effective date is impracticable.

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD07–00–106),

indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this temporary rule in view of them.

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address under **ADDRESSES**, explaining why one would be beneficial. If the Coast Guard determines that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The West 79th Street Causeway Drawbridge, mile 1084.6, across the Atlantic Intracoastal Waterway, has a vertical clearance of 19.5 feet at mean high water and a horizontal clearance of 90 feet between fenders. This bridge normally operates under 33 CFR 117.5, which requires the bridge to open promptly and fully for the passage of vessels when a request to open is given. However, on May 9, 2000, the Florida Department of Transportation (FDOT) requested that drawbridge operations be temporarily changed to allow for rehabilitation of the drawbridge. On June 6, 2000, the Coast Guard issued temporary regulations with request for comment to allow a 30-minute opening schedule on Monday through Saturday, from 7 a.m. to 6 p.m. (65 FR 35826).

Discussion of Comments and Changes

We received one comment during the comment period. FDOT requested additional restrictions due to vehicle congestion caused by the rehabilitation of the drawbridge. In addition to the existing temporary regulations that allow the drawbridge to open on the hour and half hour, Monday through Saturday, from 7 a.m. to 6:30 p.m., FDOT asked to be able to allow the bridge to remain closed from 7:30 a.m. to 9:30 a.m. and 4:30 p.m. to 6:30 p.m., Monday through Friday. This is necessary to resolve vehicular traffic congestion that is a result of the bridge rehabilitation. The drawbridge will open on demand during all other periods including federal holidays and Sundays. All of the above provisions are included in this revised temporary rule.

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, l979). The Coast Guard expects the economic impact of this rule to be minimal because the bridge will only be closed two hours in the morning and two hours in the evening on weekdays the bridge will still open 30 minute intervals and on demand during other periods.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities; owners or operators of vessels intending to transit the Intracoastal waterway at mile 1084.6. Although this temporary rule will be in effect for four months, vessel traffic can still pass through the drawbridge every 30 minutes during weekdays and Saturday, except during the weekday morning and afternoon vehicle traffic rush hours of 7:30 a.m. to 9:30 a.m. and 4:30 p.m. to 6:30 p.m. The drawbridge will open on demand during all other periods including federal holidays and Sundays.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or government jurisdiction and you have questions concerning is provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 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 Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk

to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations for the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Suspend existing temporary § 117.261(rr) from November 21, 2000, through February 28, 2001.

3. From November 21, 2000, through February 28, 2001, in § 117.261, a new paragraph (vv) is temporarily added to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(vv) West 79th Street Causeway Drawbridge, mile 1084.6, Miami, Florida. The draw need open only on the hour and half-hour, Monday through Saturday, from 7 a.m. to 6:30 p.m., beginning November 21, 2000, through February 28, 2001, except the draw may remain closed from 7:30 a.m to 9:30 a.m. and 4:30 p.m. to 6:30 p.m., Monday through Friday. The draw will open on demand during all other periods including federal holidays and Sundays.

Dated: November 21, 2000.

T.W. Allen,

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

[FR Doc. 00–31095 Filed 12–7–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AJ49

Outer Burial Receptacles

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: By statute the Department of Veterans Affairs (VA) is authorized to provide a monetary allowance for each new burial in a VA national cemetery where a privately-purchased outer burial receptacle is used in lieu of a government-furnished graveliner. This document establishes a mechanism for implementing these provisions.

DATES: *Effective Date:* This final rule is effective December 8, 2000.

Applicability Date: The provisions of Public Law 104–275 were enacted on October 9, 1996, and the provisions of this regulation shall be retroactive to this date.

FOR FURTHER INFORMATION CONTACT: Deanna Wilson, Program Analyst, Communications Management Service (402B1), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Telephone: 202–273–5154 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on April 18, 2000 (65 FR 20787), we proposed to establish a mechanism for providing a monetary allowance for each new burial in a VA national cemetery where a privately-purchased outer burial receptacle is used in lieu of a government-furnished graveliner.

We provided a 60-day comment period that ended June 19, 2000. We received 20 comments. All were in favor of the proposed rule.

Based on the rationale set forth in the proposed rule and this document, we are adopting the provisions of the proposed rule as a final rule without change.

Regulatory Flexibility Act

The Secretary certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The rule will not affect the sale of outer burial receptacles. Further, the basic provisions of the rule reflect statutory requirements. Accordingly, pursuant to 5 U.S.C. 605(b), the rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Number for programs affected by this regulation is 64.201.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Investigations, Parking, Penalties, Postal Service, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, wages.

Approved: October 31, 2000.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is amended as follows:

PART 1—GENERAL PROVISIONS

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

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

2. Section 1.629 is added to read as follows:

§ 1.629 Monetary allowance in lieu of a Government-furnished outer burial receptacle.

(a) *Definitions—Outer burial receptacle.* For purposes of this section, an outer burial receptacle means a graveliner, burial vault, or other similar type of container for a casket.

(b) *Purpose.* This section provides for payment of a monetary allowance for an outer burial receptacle for any interment in a VA national cemetery where a privately-purchased outer burial receptacle has been used in lieu of a Government-furnished graveliner.

(c) *Second interments.* In burials where a casket already exists in a grave with or without a graveliner, placement of a second casket in an outer burial receptacle will not be permitted in the same grave unless the national cemetery director determines that the already interred casket will not be damaged.

(d) *Payment of monetary allowance.* VA will pay a monetary allowance for each burial in a VA national cemetery where a privately-purchased outer burial receptacle was used on and after October 9, 1996. For burials on and after January 1, 2000, the person identified in records contained in the National Cemetery Administration Burial Operations Support System as the person who privately purchased the outer burial receptacle will be paid the monetary allowance. For burials during the period October 9, 1996 through December 31, 1999, the allowance will be paid to the person identified as the next of kin in records contained in the National Cemetery Administration Burial Operations Support System based on the presumption that such person privately purchased the outer burial receptacle (however, if a person who is

not listed as the next of kin provides evidence that he or she privately purchased the outer burial receptacle, the allowance will be paid instead to that person). No application is required to receive payment of a monetary allowance.

(e) *Amount of the allowance.* (1) For calendar year 2000 and each calendar year thereafter, the allowance will be the average cost, as determined by VA, of Government-furnished graveliners, less the administrative costs incurred by VA in processing and paying the allowance.

(i) The average cost of Government-furnished graveliners will be based upon the actual average cost to the Government of such graveliners during the most recent fiscal year ending prior to the start of the calendar year for which the amount of the allowance will be used. This average cost will be determined by taking VA's total cost during that fiscal year for single-depth graveliners which were procured for placement at the time of interment and dividing it by the total number of such graveliners procured by VA during that fiscal year. The calculation shall exclude both graveliners procured and pre-placed in gravesites as part of cemetery gravesite development projects and all double-depth graveliners.

(ii) The administrative costs incurred by VA will consist of those costs that relate to processing and paying an allowance, as determined by VA, for the calendar year ending prior to the start of the calendar year for which the amount of the allowance will be used.

(2) For calendar year 2000 and each calendar year thereafter, the amount of the allowance for each calendar year will be published in the ''Notices'' section of the **Federal Register**. The **Federal Register** Notice will also provide, as information, the determined average cost of Government-furnished graveliners and the determined amount of the administrative costs to be deducted.

(3) The published allowance amount for interments which occur during calendar year 2000 will also be used for payment of any allowances for interments which occurred during the period from October 9, 1996 through December 31, 1999.

(Authority: 38 U.S.C. 2306(d)).

[FR Doc. 00–31289 Filed 12–7–00; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–054–200027(a); FRL–6910–6]

Approval and Promulgation of Implementation Plans: Revision to the Alabama Department of Environmental Management (ADEM) Administrative Code for the Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the Alabama Department of Environmental Management's (ADEM) Administrative Code submitted on August 10, 2000, by the State of Alabama. The revisions comply with the regulations set forth in the Clean Air Act (CAA). Included in this document are revisions to clarify the definition of ''New Source,'' delete outdated rule 335–3–4–.08(4), revise rule 335–3–14–.05(2)(i) to be consistent with the Federal requirements for the Review of New Sources and Modifications, and change the numbering system to comply with the Alabama Administrative Procedures Act.

DATES: This direct final rule is effective February 6, 2001, without further notice, unless EPA receives adverse comment by January 8, 2001. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Sean Lakeman at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of documents relative to this action are available at the following addresses for inspection during normal business hours:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Alabama Department of Environmental Management, 400 Coliseum Boulevard, Montgomery, Alabama 36110–2059.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303. The telephone number is (404)562–9043. Mr. Lakeman can also be reached via electronic mail at *lakeman.sean@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Analysis of State's Submittal

On August 10, 2000, the State of Alabama through ADEM submitted revisions to chapters 335–3–1, 2, 3, 4, 5, 6, 9, 12, 14, 15, and 16. In chapter 335–3–1 the definition of ''New Source'' is being clarified to indicate that it is not applicable to the definitions of new source in chapters 335–3–10 Standards of Performance for New Stationary Sources and chapter 11 National Emission Standard for Hazardous Air Pollutants, which are not part of the federally enforceable state implementation plan (SIP).

ADEM combined rule 335–3–5–.03(5) and 335–3–5–.03(6) to be consistent with Alabama Administrative Procedures Act, and revised rule 335–3–14–.05(2)(i) to be consistent with 40 CFR 51, subpart I. ADEM deleted rule 335–3–4–.08(4) pertaining to emissions from wood waste boilers at pulp mills in Autauga County. International Paper (formally Union Camp) operates the only pulp mill in Autauga County which has been upgraded and no longer requires a bubble. The Union Camp boilers are subject to other emission limits in the federally approved SIP.

ADEM revised the numbering system in chapters 335–3–1, 2, 3, 4, 5, 6, 9, 12, 14, 15, and 16 to comply with numbering system required by the Legislative Reference Service under Alabama Administrative Procedures Act.

II. Final Action

EPA is approving the aforementioned change to the State of Alabama's SIP because they are consistent with the CAA and EPA policy. The EPA is publishing this rule without a prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective February 6, 2001, without further notice unless the Agency receives adverse comments by January 8, 2001.

If the EPA receives such comments, then EPA will publish a document

withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on February 6, 2001 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 6, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and will not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Lead, Intergovernmental relation, Reporting and record keeping requirements.

Dated: November 8, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

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

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

Subpart B—Alabama

2. Section 52.50(c) is amended:

a. Under Chapter No. 335–3–1 by revising entries ''Section 335–3–1-.02'' and ''Section 335–3–1-.08.''

b. Under Chapter No. 335–3–2 by revising entry ''Section 335–3–2-.02.''

c. Under Chapter No. 335–3–3 by revising entries ''Section 335–3–3-.01'' and ''Section 335–3–3-.03.''

d. Under Chapter No. 335–3–4 by revising entries ''Section 335–3–4-.08'' and ''Section 335–3–4-.09.''

e. Under Chapter No. 335–3–5 by revising entries ''Section 335–3–5-.03'' and ''Section 335–3–5-.04.''

f. Under Chapter No. 335–3–6 by revising entries ''Section 335–3–6-.06'' and ''Section 335–3–6-.16.''

g. Under Chapter No. 335–3–9, the second entry for ''Section 335–3–9–.01'' is redesignated as ''Section 335–3–9–.02'' and revised; the existing entry for ''Section 335–3–9–.02'' is redesignated as ''Section 335–3–9–.03'', and revised; and the entry ''Section 335–3–9–.06'' is revised.

h. Chapter 335–3–3–14 is redesignated as Chapter 335–3–14.

i. Under Chapter No. 335–3–14 by deleting entries ''Section 335–3–14-.04(ff-gg)'' and ''Section 335–3–14-.04(8)(m).''

j. Under Chapter No. 335–3–14 by revising entries ''Section 335–3–14-.03,'' ''Section 335–3–14–04'' and ''Section 335–3–14-.05.''

k. Under Chapter No. 335–3–15 by revising entry ''Section 335–3–15-.02.''

§ 52.50 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED ALABAMA REGULATIONS

State citation	Title subject	Adoption date	EPA approval date	Federal register notice
Chapter No. 335–3–1—General Provisions				
* *	*	* *		* *
Section 335–3–1–1–.02	Definitions	August 10, 2000	12/8/00	65 FR 76940
* *	*	* *		* *
Section 335–3–1–.08	Prohibition of Air Pollution	August 10, 2000	12/8/00	65 FR 76940
* *	*	* *		* *
Chapter No. 335–3–2—Air Pollution Emergency				
* *	*	* *		* *
Section 335–3–2–.02	Episode Criteria	August 10, 2000	12/8/00	65 FR 76940
* *	*	* *		* *
Chapter No. 335–3–3—Control of Open Burning and Incineration				
Section 335–3–3–.01	Open Burning	August 10, 2000	12/8/00	65 FR 76940
* *	*	* *		* *
Section 335–3–3–.03	Incineration of Wood, Peanut, and Cotton Ginning Waste.	August 10, 2000	12/8/00	65 FR 76940
Chapter No. 335–3–4—Control of Particulare Emissions				
* *	*	* *		* *
Section 335–3–4–.08	Wood Waste Boilers	August 10, 2000	12/8/00	65 FR 76940
Section 335–3–4–.09	Coke Ovens	August 10, 2000	12/8/00	65 FR 76940
* *	*	* *		* *
Chapter No. 335–3–5—Control of Sulfur Compound Emissions				
* *	*	* *		* *
Section 335–3–5–.03	Petroleum Production	August 10, 2000	12/8/00	65 FR 76940
Section 335–3–5–.04	Kraft Pulp Mills	August 10, 2000	12/8/00	65 FR 76940
* *	*	* *		* *
Chapter No. 335–3–6—Control of Organic Emissions				
* *	*	* *		* *
Section 335–3–6–.06	Bulk Gasoline Terminals	August 10, 2000	12/8/00	65 FR 76940
* *	*	* *		* *
Section 335–3–6–.16	Test Methods and Procedures	August 10, 2000	12/8/00	65 FR 76940
* *	*	* *		*
Chapter No. 335–3–9—Control of Emissions from Motor Vehicles				
* *	*	* *		* *
Section 335–3–9–.02	Ignition System and Engine Speed.	August 10, 2000	12/8/00	65 FR 76940
Section 335–3–9–.03	Crankcase Ventilation Systems	August 10, 2000	12/8/00	65 FR 76940
* *	*	* *		* *
Section 335–3–9–.06	Other Prohibited Acts	August 10, 2000	12/8/00	65 FR 76940
Chapter No. 335–3–14—Air Permits				

EPA APPROVED ALABAMA REGULATIONS—Continued

State citation	Title subject	Adoption date	EPA approval date	Federal register notice
* *	*	*	*	* *
Section 335–3–14–.03	Standards for Granting Permits	August 10, 2000	12/8/00	65 FR 76940
Section 335–3–14–.04	Air Permits Authorizing Construction in Clean Air Areas (Prevention of Significant Deterioration Permitting (PSD)).	August 10, 2000	12/8/00	65 FR 76940
Section 335–3–14–.05	Air Permits Authorizing Construction in or Near Nonattainment Areas.	August 10, 2000	12/8/00	65 FR 76940
* *	*	*	*	* *
Chapter No. 335–3–15—Synthetic Minor Operating Permits				
* *	*	*	*	* *
Section 335–3–15–.02	General Provisions	August 10, 2000	12/8/00	65 FR 76940
* *	*	*	*	* *

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[FR Doc. 00–30635 Filed 12–7–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–6913–9]

RIN 2060–A177

National Emission Standards for Aerospace Manufacturing and Rework Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On September 1, 1995, we promulgated the National Emission Standards for Aerospace Manufacturing and Rework Facilities. On January 24, 2000, we proposed to amend the standards to include a separate emission limit for exterior primers used for large commercial aircraft at existing facilities that produce fully assembled, large commercial aircraft. This action finalizes those proposed amendments.

In addition, we are making a minor correction to the monitoring requirements section of the aerospace emission standards. The amendment helps correct regulatory language that erroneously made reference to a list of requirements for initial compliance demonstrations when using incinerators and carbon adsorbers.

EFFECTIVE DATE: December 8, 2000.

ADDRESSES: Docket No. A–92–20 contains supporting information used in developing the standards. The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Jaime Pagan, Policy, Planning, and Standards Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5340, facsimile (919) 541–0942, electronic mail address pagan.jaime@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Categories and entities potentially affected by this action include:

Category	SIC[a]	NAICS[b]	Regulated entities.
Industry	3721	336411	Facilities which are major source of hazardous air pollutants and manufacture large commercial aircraft.

[a] Standard Industrial Classification.
[b] North American Information Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Technical Support Document

A summary of the public comments received on the proposed amendments and our response to those comments is included in a memorandum in the docket for this rule (Docket No. A–92–20). The title of the memorandum is ''Summary of Comments and Responses for the Proposed Amendments to the Aerospace Manufacturing and Rework Facilities NESHAP.''

Judicial Review

Under section 307(b) of the Clean Air Act (CAA), judicial review of these final amendments is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by February 6,

2001. Under section 307(d)(7)(B) of the CAA, only an objection to these amendments which was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

I. What Is the Background for the Amendments?

On September 1, 1995 (60 FR 45948), we promulgated the National Emission Standards for Aerospace Manufacturing and Rework Facilities (40 CFR part 63, subpart GG) under section 112(d) of the CAA. The rule includes standards to control organic hazardous air pollutants (HAP) and volatile organic compounds (VOC) emissions from primers with an organic HAP and VOC content level of 350 grams per liter (g/L) (2.9 pounds per gallon (lb/gal)) or less (§ 63.745(c)(1) and (2)). These limits applied where no add-on control systems were used. Alternatively, an affected source could use a control system to reduce the organic HAP and VOC emissions to the atmosphere by 81 percent or greater (§ 63.745(d)).

On January 24, 2000, we proposed to amend the promulgated emission limits contained in § 63.745(c)(1) and (2) for primer operations with no add-on control systems by proposing a separate emission limit of 650 g/L (5.4 lb/gal) or less of organic HAP and VOC for exterior primers, as applied to large commercial aircraft components (parts or assemblies) or fully assembled, large commercial aircraft at existing affected sources that produce fully assembled, large commercial aircraft (65 FR 3642). Our basis for the proposed amendments was data submitted to us by a manufacturer of large commercial aircraft and a reevaluation of the original data used to establish the MACT floor for primer application operations (*e.g.,* the primer containing 1,1,1-trichloroethane (TCA) that was evaluated and included in the floor determination is no longer available).

Today's action finalizes those amendments based on comments received on the proposed amendments and our response to those comments. Five comment letters were received on the proposed amendments. Two of the comment letters were supportive of the proposal and the decisions we made with respect to the applicability, definitions and the revised HAP and VOC content limits. One commenter submitted information on the potential use of a chemical in coating formulations to meet organic HAP and VOC content limits. Another commenter disagreed with our proposal by stating that there is add-on control technology available to help reduce emissions to the currently required levels. Finally, one commenter expressed the opinion that the proposal should apply to both original equipment manufacturers and rework facilities, and that a definition of large commercial aircraft components should be added to the standards.

We carefully considered each of the public comments and concluded that no changes to the proposed amendments were warranted. A complete summary of the public comments received on the proposed amendments and our responses to those comments is included in a memorandum in the docket (Docket No A–92–20). Our responses to the public comments are briefly summarized here. First, with regard to new coating formulations, we appreciate the information and encourage the development of new coatings, but the coatings described by the first commenter are still in the testing and development stages for aerospace applications. With regard to the information on add-on controls provided by the second commenter, we did not change our decisions about the basis for the standards; but the standards do still provide for the option to use add-on controls to meet the emission limitations. Likewise, we were not persuaded based on information from the third commenter that the amendments should be extended to rework operations, especially given supportive comments from a company with similar operations. Lastly, we considered adding a definition of ''large commercial aircraft components''. The term ''large commercial aircraft'' was already defined in the proposal, but we were unable to create a definition of ''aircraft components'' that is all inclusive and that would not be subject to change in the future. Further, we believe that the definition of exterior primer included in the amendments provides a clear explanation of where the primer is to be applied.

In addition to the amendments described above, we are making a minor correction to the monitoring requirements section of the aerospace emission standards. This revision helps correct regulatory language that erroneously made reference to a list of requirements for initial compliance demonstrations when using incinerators and carbon adsorbers. In § 63.751, requirements for initial compliance demonstrations are listed in paragraphs (b)(1) through (12). The introductory language of paragraph (b) indicates that the requirements in paragraphs (b)(1) through (7) apply when using carbon adsorbers. Then, the introductory language in paragraph (b) incorrectly indicates that paragraphs (b)(9) through (12) apply when using incinerators. The revision that we are making in this action clarifies the paragraph to correctly state that paragraphs (b)(8) through (12) apply when using incinerators.

Although the revision to § 63.751 described above was not part of the proposal in 65 FR 3642, 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. The EPA has determined that there is good cause for finalizing this revision without prior proposal and opportunity for comment because the change corrects an inadvertent mistake in an introductory paragraph referencing a list of requirements for initial compliance demonstrations. Thus, notice and public procedure are unnecessary. The EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

II. What Are the Impacts Associated With These Amendments?

This action will not significantly affect the estimated emissions reductions or the control costs for the standards promulgated for aerospace manufacturing and rework facilities. Only one company has been identified as being affected by the proposed amendments. These amendments address significant technical concerns regarding this aircraft manufacturer's ability to achieve the promulgated 350 g/L (2.9 lb/gal) HAP and VOC content limit requirements when using exterior primers.

Finally, the amendment that we are making to the monitoring requirements section of the aerospace emission standards is a minor correction needed to revise an inadvertent mistake in the regulatory language of the original regulation. As such, there are no impacts associated with this correction.

III. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of

the Executive Order. The Executive Order defines ''significant regulatory action'' as one that OMB determines is likely to result in a rule that may:

(1) Have an annual effect of the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a ''significant regulatory action'' because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the 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, the 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 the EPA consults with State and local officials early in the process of developing the proposed regulation. The 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.

If the EPA complies by consulting, Executive Order 13132 requires the EPA to provide to 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 the 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 the EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, the EPA must include a certification from the Agency's Federalism Official stating that the EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

These amendments 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. Thus, the requirements of section 6 of the Executive Order do not apply to these amendments.

C. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance cost incurred by the Tribal governments, or if the EPA consults with those governments. If the EPA complies by consulting, the EPA is required to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, the EPA is required 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.''

These amendments do 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 action.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that (1) OMB determines is ''economically significant,'' as defined under Executive Order 12866, and (2) the EPA determines the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental, health, or safety aspects of the rule on children and explain why the rule is preferable to other potentially effective and reasonably feasible alternatives considered by the EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. These amendments are not subject to Executive Order 13045 because they are based on technology performance and not on health or safety risks. Furthermore, these amendments have been determined not to be ''economically significant'' as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

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, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-

costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, 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.

The EPA has determined that these amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. There is no cost associated with these amendments. Thus, today's amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that these amendments do not contain regulatory requirements that might significantly or uniquely affect small governments because they do not contain requirements that apply to such governments or impose obligations upon them. Therefore, today's amendments are not subject to the requirements of section 203 of the UMRA.

Because these amendments do not include a Federal mandate and are estimated to result in expenditures less than $100 million in any 1 year by State, local, and tribal governments, the EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. In addition, because small governments would not be significantly or uniquely affected by these amendments, the EPA is not required to develop a plan with regard to small governments. Therefore, the requirements of the UMRA do not apply to this action.

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 amendments to the final rule on small entities, small entity is defined as: (1) A small business that has fewer than 1,500 employees; (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 proposed amendments on small entities, it has been determined that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. It affects only manufacturers of large commercial aircraft. There are no small-entity manufacturers of large commercial aircraft.

G. Paperwork Reduction Act

These proposed amendments would not impose any new information collection requirements that would result in changes to the currently approved collection. The OMB approved the information collection requirements contained in the Aerospace Manufacturing and Rework Facilities NESHAP under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 2060–0314.

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.

H. 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 all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* material specifications, test method, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency decides not to use available and applicable voluntary consensus standards.

These amendments do not require the use of any new technical standards, therefore section 12(d) does not apply.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA 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 corrections amendments, to each House of the Congress and to the Comptroller General of the United States. Therefore, we will submit a report containing these amendments and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action does not constitute a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects for 40 CFR Part 63

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

Dated: December 4, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63, title 40, chapter I of the Code of Federal Regulations, is amended as follows:

PART 63—[AMENDED]

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

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

Subpart GG—National Emission Standards for Aerospace Manufacturing and Rework Facilities

2. Section 63.742 is amended by adding in alphabetical order definitions

for ''*Exterior primer*'' and ''*Large commercial aircraft*'' to read as follows:

§ 63.742 Definitions.

* * * * *

Exterior primer means the first layer and any subsequent layers of identically formulated coating applied to the exterior surface of an aerospace vehicle or component where the component is used on the exterior of the aerospace vehicle. Exterior primers are typically used for corrosion prevention, protection from the environment, functional fluid resistance, and adhesion of subsequent exterior topcoats. Coatings that are defined as specialty coatings are not included under this definition.

* * * * *

Large commercial aircraft means an aircraft of more than 110,000 pounds, maximum certified take-off weight manufactured for non-military use.

* * * * *

3. Section 63.745 is amended by revising paragraphs (c)(1) and (2) to read as follows:

§ 63.745 Standards: Primer and topcoat application operations.

* * * * *

(c) * * *

(1) Organic HAP emissions from primers shall be limited to an organic HAP content level of no more than: 540 g/L (4.5 lb/gal) of primer (less water), as applied, for general aviation rework facilities; or 650 g/L (5.4 lb/gal) of exterior primer (less water), as applied, to large commercial aircraft components (parts or assemblies) or fully assembled, large commercial aircraft at existing affected sources that produce fully assembled, large commercial aircraft; or 350 g/L (2.9 lb/gal) of primer (less water), as applied.

(2) VOC emissions from primers shall be limited to a VOC content level of no more than: 540 g/L (4.5 lb/gal) of primer (less water and exempt solvents), as applied, for general aviation rework facilities; or 650 g/L (5.4 lb/gal) of exterior primer (less water and exempt solvents), as applied, to large commercial aircraft components (parts or assemblies) or fully assembled, large commercial aircraft at existing affected sources that produce fully assembled, large commercial aircraft; or 350 g/L (2.9 lb/gal) of primer (less water and exempt solvents), as applied.

* * * * *

4. Section 63.751 is amended by revising paragraph (b) introductory text to read as follows:

§ 63.751 Monitoring requirements.

* * * * *

(b) *Incinerators and carbon adsorbers-initial compliance demonstrations.* Each owner or operator subject to the requirements in this subpart must demonstrate initial compliance with the requirements of §§ 63.745(d), 63.746(c), and 63.747(d) of this subpart. Each owner or operator using a carbon adsorber to comply with the requirements in this subpart shall comply with the requirements specified in paragraphs (b)(1) through (7) of this section. Each owner or operator using an incinerator to comply with the requirements in this subpart shall comply with the requirements specified in paragraphs (b)(8) through (12) of this section.

* * * * *

[FR Doc. 00–31331 Filed 12–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6913–2]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final deletion of the University of Minnesota Rosemount Research Center Superfund Site from the National Priorities List (NPL).

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

DATES: This ''direct final'' action will be effective February 6, 2001 unless EPA receives dissenting comments by January 8, 2001. If written dissenting comments are received, EPA will publish a timely withdrawal of the rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, U.S. Environmental Protection Agency, Superfund Division, U.S. EPA, Region 5, 77 W. Jackson Blvd., (SR–6J), Chicago, IL 60604. Requests for comprehensive information on this Site is available through the public docket which is available for viewing at the Site Information Repository at the following location: The Minnesota Pollution Control Agency, Administrative Records, 520 Lafayette Road North, Saint Paul, Minnesota 55155–4184.

FOR FURTHER INFORMATION CONTACT: Gladys Beard (SR–6J), U.S. Environmental Protection Agency, 77 W. Jackson, Chicago, IL, (312) 886–7253, FAX (312) 886–4071, e-mail beard.gladys@epa.gov

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion
V. Action

I. Introduction

EPA Region 5 announces the deletion of the releases from the University of Minnesota Rosemont Research Center Site, Rosemount, Dakota County, Minnesota, from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. EPA and the State of Minnesota have determined that the remedial action for the Site has been successfully executed. EPA will accept comments on this notice thirty days after publication of this notice in the **Federal Register**.

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

II. NPL Deletion Criteria

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

whether any of the following criteria has been met:

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

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

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

Even if the release is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the Site will be conducted at least every five years after the initiation of the remedial action at the Site to ensure that the Site remains protective of public health and the environment. In the case of this Site, EPA conducted a Five-Year Review in June, 1997 and a second one is due June 2002. Based on these reviews, EPA determined that conditions at the Site remain protective of public health and the environment. As explained below, the Site meets the NCP's deletion criteria listed above. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site shall be restored to the NPL without the application of the Hazard Ranking System (HRS).

III. Deletion Procedures

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

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

IV. Basis for Intended Site Deletion

The University of Minnesota Rosemount Research Center (UMRRC) is located within the city limits of Rosemount in Dakota County, approximately 20 miles southeast of the Minneapolis/St. Paul metropolitan area. The UMRRC covers approximately five square miles and is used by some light manufacturing and service companies. Within the confines of the UMRRC, the UMRRC Site consists of three industrial disposal sites: the George's Used Equipment (GUE) site, the Porter Electric and Machine Company (PE) site, and the U.S. Transformer (UST) site. The University also burned discarded laboratory chemicals in a burn pit area on the Site.

The University and the MPCA signed a Response Action Agreement on May 30, 1985, under the Minnesota Environmental Response and Liability Act (MERLA) for the cleanup of the UMRRC Site groundwater and soil. In December 1987, the UMRRC Site was placed on the National Priority List. Remedial Investigation (RI) activities were conducted under the Agreement from 1984 through 1988.

The RI determined that soil and concrete at all three disposal sites were contaminated by polychlorinated biphenyls (PCBs). In addition, the GUE site was also found to be contaminated with lead and copper. PCBs in the soil were as high as 63,000 parts per million (ppm) and lead was as high as 40,000 ppm. Groundwater at the site was found to be contaminated with chloroform from the burn pit area. The highest concentration of chloroform found was 72 parts per billion (ppb) in a monitoring well one mile from the burn pit.

The GUE site was used as an electrical storage and salvage facility, as well as a general salvage facility between 1968 and 1985. Activities at this site resulted in soil and concrete contamination by lead and PCBs. The PE site was used for storage and reconditioning of used industrial electrical equipment. Soil at this site is contaminated with PCBs. The UST site was used for dismantling and salvaging electrical transformers. Soil and concrete at the UST site was contaminated with PCBs.

After reviewing the results of the RI/Feasibility Study (FS), the MPCA completed a ROD on June 11, 1990; EPA concurred with the ROD on June 29, 1990. The selected remedy had five major components:

1. Excavating approximately 6,500 cubic yards of soil and concrete contaminated with greater than 25 ppm PCBs and approximately 2,600 cubic yards of soil contaminated with copper and lead where the soil exceed 1,000 ppm lead;

2. Consolidating approximately 15,000 cubic yards of soil from the three disposal sites contaminated with PCBs which ranged in concentration from 10 to 25 ppm PCBs at GUE and restricting access;

3. Thermally destroying the PCBs in the soil and concrete;

4. Transporting the soil contaminated with lead and copper to an off-site Resource Conservation and Recovery Act (RCRA)-permitted landfill; transporting lead contaminated soil which also contained PCBs to a Toxic Substances Control Agency (TSCA)/RCRA-permitted landfill; and

5. Backfilling with clean soil, grading and establishing vegetation.

The ROD also included a groundwater pump and treatment system for the chloroform contaminated groundwater. It should be noted that the groundwater pump and treatment system was in place and operating at the time the ROD was written. The pump and treatment system had already been completed by the University as a part of its response under the MERLA Response Action Agreement.

During July and August 1990, the University disposed of soil contaminated with lead and copper. The soil contaminated with lead and copper was disposed of at the Adams Center Landfill located in Ft. Wayne, Indiana, a RCRA-permitted landfill. Lead contaminated soil containing greater than 49 ppm PCBs was disposed of at the Chemical Waste Management, Inc., Landfill in Emelle, Alabama, a TSCA/RCRA-permitted landfill.

Based on a request from the University, the ROD was modified in August 1991 with the completion of an Explanation of Significant Difference (ESD) by the MPCA and EPA. The changes approved in the ESD were:

1. Allowing the University the option of using either on-site incineration or the previously approved alternative of

thermal desorption to vaporize and destroy the PCB's;

2. Allowing the University to restrict access to the three disposal sites with soil PCB levels which ranged between 10 and 25 ppm PCBs rather than consolidating this soil; and

3. Requiring the University to perform a review of the effectiveness of the remedial action three years after completion of the remedy rather than three years after the approval of the remedial action clean-up plan.

In order to operate a thermal destruction unit in the State of Minnesota, the MPCA issued the University an '' Authorization to Install and Operate a Thermal Destruction Unit, University of Minnesota Rosemount Research Station,'' (Authorization to Burn) on December 27, 1991. The Authorization to Burn was modified on February 3, 1992, and August 17, 1992. These modifications reduced the scope of the Authorization to Burn based on additional information received from the University and from Roy F. Weston, Inc. (Weston), the University's clean-up contractor.

The University chose to destroy the PCBs using the on-site incineration option. Weston began site activities on June 30, 1992; began incinerating contaminated soil at the Site in March 1993; and completed the thermal destruction of soil and concrete in July 1993.

The MPCA approved the shutdown of the pump and treatment system on October 30, 1991. This was in part due to the Minnesota Department of Health (MDH) changing its Recommended Allowable Limit (RAL) for chloroform from 5 to 57 ppb. The groundwater was also found to meet other state groundwater drinking water criteria.

On June 1, 1993, the University requested that it be allowed to consolidate PCB contaminated soil which ranged between 10 and 25 ppm at GUE as originally described in the ROD. The University decided that it was now more feasible to consolidate the soil than was envisioned at the time of the first ESD. The ESD also indicated that all remaining soil contaminated with one to 10 ppm PCBs will be covered with 10 inches of clean fill in order to comply with the TSCA PCB Spill Policy and to provide unrestricted access to these areas. The MPCA prepared a second ESD to address these changes and EPA concurred with the ESD on October 1, 1993.

On September 24, 1993, the EPA and the MPCA performed the preliminary site inspection. At that time, the remedy was substantially complete with the exception of consolidating a small amount of soil into the GUE depression and also transporting a small quantity of soil to an off-site landfill. A final site inspection was conducted on September 20, 1994, and all construction activities were found to be completed.

V. Action

The remedy selected for this Site has been implemented in accordance with the Record of Decision and subsequent Explanation of Significant Difference. The remedy has resulted in the significant reduction of the long-term potential for release of contaminants, therefore, human health and potential environmental impacts have been minimized. EPA and the State of Minnesota find that the remedies implemented continue to provide adequate protection of human health the environment.

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

This action will be effective February 6, 2001. However, if EPA receives dissenting comments by January 8, 2001, EPA will publish a document that withdraws this action.

List of Subjects in 40 CFR Part 300

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

Dated: November 28, 2000.

Elissa Speizman,

Acting Regional Administrator, EPA, Region 5.

Part 300, title 40 of chapter 1 of the Code of Federal Regulations is amended as follows:

Part 300—[AMENDED]

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

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

Appendix B—[Amended]

2. Table 1 of appendix B to Part 300 is amended by removing the site for ''University of Minnesota Rosemount, Res Cen, Rosemount, Minnesota.''

[FR Doc. 00–31191 Filed 12–7–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–2681, MM Docket No. 00–97; RM–9865]

Digital Television Broadcast Services; Richmond, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Central Virginia Educational Telecommunications Corporation, licensee of noncommercial station WCVE–TV, substitutes DTV Channel *42 for station WCVE–TV's assigned DTV Channel *24a at Richmond, Virginia. *See* 65 FR 36808, June 12, 2000. DTV Channel *42 can be allotted to Richmond at coordinates (37–30–46 N. and 77–36–06 W.) with a power of 100, HAAT of 327 meters and with a DTV service population of 1097 thousand.

With this action, this proceeding is terminated.

DATE: Effective January 16, 2001.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–97, adopted November 30, 2000, and released December 1, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Virginia, is amended by removing DTV Channel *24d and adding DTV Channel *42 at Richmond.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 00–30972 Filed 12–7–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket Nos. 98–204 and 96–16, FCC 00–338]

Revision of Broadcast and Cable EEO Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification; petition for partial reconsideration.

SUMMARY: This document grants in part, and denies in part, both one petition for partial reconsideration and clarification and one petition for expedited clarification of the Commission's new broadcast and cable Equal Employment Opportunity (EEO) rules and policies. The document also considers certain issues pertaining to the EEO rules on the motion of the Commission, primarily as a result of informal inquiries from the public. In addition, the document amends the EEO rules to clarify that data concerning the gender, race and ethnicity of a broadcaster's or cable entity's workforce will not be used to assess its compliance with the rules. The intended effect is to clarify the Commission's EEO rules for the broadcasting and cable industries.

DATE: Effective January 8, 2001.

FOR FURTHER INFORMATION CONTACT: EEO Staff, (202) 418–1450.

SUPPLEMENTARY INFORMATION: 1. This is a synopsis of the Commission's Memorandum Opinion and Order (MO&O) in MM Docket Nos. 98–204 and 96–16, adopted September 11, 2000, and released November 22, 2000. The complete text of this MO&O is available for inspection and copying during normal business hours in the FCC Reference Information, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., at 202–857–3800, CY–B400, 445 12th St., SW., Washington, D.C.

Synopsis of Memorandum Opinion and Order

2. In this MO&O, the Commission addresses petitions for reconsideration and clarification of the Report and Order in this proceeding, 65 FR 7448, February 15, 2000, in which it adopted new broadcast and cable EEO rules and policies consistent with the D.C. Circuit's decision in *Lutheran Church—Missouri Synod* v. *FCC,* 141 F.3d 344 (D.C. Cir. 1998), pet. for reh'g denied, 154 F.3d 487, pet. for reh'g en banc denied, 154 F.3d 494 (D.C. Cir. 1998). The EEO rules include broad and inclusive outreach requirements designed to ensure that all qualified applicants have the opportunity to compete for jobs in the broadcast and cable industries on an equal basis.

3. Under Option A of the Commission's EEO rules, broadcasters are required to implement two supplemental recruitment measures: (1) Notification of job vacancies to any recruitment organization that requests such notification; and (2) outreach activities such as job fairs, internship programs, training programs, scholarship programs, mentoring programs, and participation in educational and community activities relating to broadcast employment. Broadcasters with five to ten full-time employees must perform two activities every two years, while larger broadcasters must perform four activities every two years. The MO&O clarifies that broadcasters may implement half of two activities and combine the two halves to count as one of the four required activities (or two in the case of stations with five to ten employees), *e.g.,* by combining attendance at two (rather than four) job fairs and sponsorship of one (rather than two) community events.

4. The MO&O reiterates that a broadcaster may use the internet as one of several recruitment tools, but not as its only recruitment source. It also retains the requirement that broadcasters with web sites post their public file report on those sites, and clarifies that there is no requirement that the public file report include the names of interviewees or applicants.

5. The MO&O clarifies the filing schedule for the initial statement of compliance (FCC Form 397) so that beginning in 2001, all radio and television stations will file a statement of compliance on the second, fourth or sixth anniversary of the filing of their last renewal application. Beginning February 1, 2001, low power television stations and Class A television stations with five or more full-time employees will file statements of compliance in accordance with the schedule for television stations.

6. The MO&O also clarifies that broadcasters and cable entities have the discretion of electing either Option A or B of the Commission's EEO rules, and any state law interpreted as removing that discretion would be inconsistent with the rules. The MO&O further clarifies the extent to which broadcasters may engage in joint recruitment measures under Option A. In addition, the MO&O clarifies that broadcasters have good faith discretion in defining what constitutes an applicant and their market/community under the EEO rules. The MO&O also addresses how the Commission will monitor religious broadcasters' compliance with the EEO rules.

7. Finally, the MO&O retains the requirement that broadcasting and cable entities file annual employment reports which include data on the gender, race and ethnic status of the entity's workforce. The MO&O reiterates that the data will be used only for purposes of analyzing industry trends and reporting to Congress, and not for assessing an entity's compliance with the Commission's EEO rules. Accordingly, the MO&O amends the rules to reflect this fact.

Paperwork Reduction Act of 1995 Analysis

The actions contained in this Memorandum Opinion and Order have been duly analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified information collection requirements.

Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847 (1996), requires that a final regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' (Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration. In addition to stating various clarifications to the

Commission's EEO rules, this MO&O incorporates into the rules a policy announced in the Report and Order that data concerning the gender, race and ethnicity of a broadcaster's or cable entity's workforce will not be used to assess compliance with our EEO rules. This rule change merely retains the status quo, and for clarity restates the existing policy in a Note to the rules. Therefore, we certify that the rule change adopted in this MO&O will not have a significant economic impact on a substantial number of small business entities.

Report to Congress: The Commission will send a copy of the MO&O, including this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). In addition, the Commission's Consumer Information Bureau, Reference Information Center, will send a copy of the MO&O, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration. A summary of the MO&O and certification will also be published in the **Federal Register**.

List of Subjects

47 CFR Part 73

Radio, Equal employment opportunity, Reporting and recordkeeping requirements, Television.

47 CFR Part 76

Cable television, Equal employment opportunity, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 73 and 76 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

2. Add Note to § 73.3612 to read as follows:

§ 73.3612 Annual employment report.

* * * * *

Note to § 73.3612: Data concerning the gender, race and ethnicity of a broadcast station's workforce collected in the annual employment report will be used only for purposes of analyzing industry trends and making reports to Congress. Such data will not be used for the purpose of assessing any aspect of an individual broadcast licensee's compliance with the equal employment opportunity requirements of § 73.2080.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

3. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

4. Section 76.77 is amended by:

(a) Adding a note to paragraph (a).

(b) Designating the note following paragraph (d)(1) as ''Note to paragraph (d)(1).''

(c) Designating the note following paragraph (d)(6) as ''Note to paragraph (d)(6).''

(d) Designating the note following paragraph (d)(13) as ''Note to paragraph (d)(13).''

(e) Designating the note following paragraph (d)(15) as ''Note to paragraph (d)(15).''

The addition reads as follows:

§ 76.77 Reporting requirements.

* * * * *

Note to paragraph (a): Data concerning the gender, race and ethnicity of a cable entity's workforce collected in the annual employment report will be used only for purposes of analyzing industry trends and making reports to Congress. Such data will not be used for the purpose of assessing any aspect of an individual cable entity's compliance with the equal employment opportunity requirements of §§ 76.73 and 76.75.

[FR Doc. 00–31308 Filed 12–7–00; 8:45 am]

BILLING CODE 6712–01–U

Proposed Rules

Federal Register
Vol. 65, No. 237
Friday, December 8, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–256–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 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 EMBRAER Model EMB–145 series airplanes. This proposal would require inspection of the bolts on the hinge fittings that attach the spring tab and the servo tab to the rear spar of the elevators for evidence of loosening; inspection of the region of the hinge fittings on the spring tab for interference of the bonding jumpers attached to the hinge fittings with the leading edge of the spring tab; and corrective action, if necessary. The proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign airworthiness authority. The action specified by the proposed AD is intended to prevent the spring tab or the servo tab from becoming disconnected, resulting in structural failure. The action is also intended to prevent damage to the leading edge of the spring tab, which could result in loss of control of the elevator.

DATES: Comments must be received by January 8, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–256–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2000–NM–256–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 Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Viswa Padmanabhan, Aerospace Engineer, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6049; fax (770) 703–6097.

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 action 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 action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2000–NM–256–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–256–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–145 series airplanes. The DAC reported an instance of the loosening of the bolts on the hinge fittings which attach the spring tab and the servo tab to the rear spar of the elevators and indicated that the resulting loss of attachment rigidity may lead to undesirable levels of vibration. The DAC also notified the FAA that the bonding jumpers held in position by bolts on the hinge fittings may interfere with the leading edge of the spring tab.

The actions specified by the proposed AD are intended to prevent the spring tab or the servo tab from becoming disconnected, resulting in structural failure. The actions are also intended to prevent damage to the leading edge of the spring tab, which could result in loss of control of the elevator.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145–55–0009, Change No. 02, dated May 19, 2000, which describes procedures for a one-time inspection of

the bolts on the hinge fittings that attach the spring tab and the servo tab to the rear spars of the elevators for evidence of loosening. The service bulletin also describes procedures for a one-time inspection of the region of the hinge fittings on the spring tab for interference of the bonding jumpers with the leading edge of the spring tab.

If no discrepancies are found, operators must perform follow-up repetitive inspections as specified in the service bulletin. If discrepancies are found, operators must perform modifications, such as replacing the bolts with improved bolts, installing washers, installing lockwire or changing its position, and changing the position of the bonding jumpers. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The DAC issued Brazilian airworthiness directive 98–05–02, dated May 28, 1998, which referred to Embraer Service Bulletin 145–55–0009, initial release or further revisions approved by the Brazilian airworthiness authority.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, 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, except as described below.

Differences Between Proposed Rule and Service Bulletin/Brazilian Airworthiness Directive

The intervals between repetitive inspections in the proposed AD (stated in flight hours) differ from those recommended in the manufacturer's service bulletin (stated to coincide with operators' ''A'' checks). However, because regularly scheduled maintenance intervals, such as ''A'' checks, may vary from operator to operator, there would be no assurance that the inspections would be accomplished during the maximum intervals proposed by this AD. These intervals are intended to maintain an adequate level of safety within the fleet.

Another difference concerns the compliance time for accomplishment of the terminating action. The manufacturer's service bulletin recommends that, if no discrepancy is found during the initial inspection described in Part I, the terminating action described in Part II, III, or IV may be accomplished at any time, at the operator's discretion. However, the FAA has determined that requiring a specific compliance time is necessary to adequately address the identified unsafe condition. In developing an appropriate compliance time for this proposed AD, the FAA considered not only the manufacturer's recommendation, but also the degree of urgency associated with addressing the subject unsafe condition and the average utilization of the affected fleet. In light of these factors, the FAA finds a compliance time of 2,000 flight hours for accomplishing the terminating actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Finally, Brazilian airworthiness directive 98–05–02 refers to EMBRAER Service Bulletin 145–55–0009, initial release, or further revision approved by the Brazilian airworthiness authority. The proposed AD refers to EMBRAER Service Bulletin 145–55–0009, Change No. 2, dated May 19, 2000, which includes procedures for repetitive inspections for interference between the bonding jumpers and the leading edge of the spring tab.

Cost Impact

The FAA estimates that 71 airplanes of U.S. registry would be affected by this proposed AD.

The initial inspection would take 2 work hours per airplane at an average labor rate of $60 per hour. Based on these figures, the cost impact on U.S. operators of the initial inspection (Part I) specified in the proposed AD is estimated to be $8,520, or $120 per airplane.

The cost impact on U.S. operators of follow-on actions is specified in the following table:

COST OF FOLLOW-ON ACTIONS

Action	Work hours	Cost of labor/ airplane	Cost of parts/ airplane	Cost/airplane
Corrective action/ Part II	6	$360	$71	$431
Corrective action/ Part III	6	360	2	362
Repetitive inspection/ Part IV	3	180	0	180

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

Regulatory Impact

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira De Aeronautica S.A. (EMBRAER): Docket 2000–NM–256–AD.

Applicability: Model EMB–145 series airplanes; serial numbers 145004 through 145103 inclusive, 145105 through 145111 inclusive, and 145113 through 145117 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if 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 spring tab or the servo tab from becoming disconnected, resulting in structural failure, and to prevent damage to the leading edge of the spring tab, which could result in loss of control of the elevator, accomplish the following:

Inspection

(a) Within 200 flight hours after the effective date of this AD, conduct a detailed visual inspection, as specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–55–0009, Change No. 02, dated May 19, 2000.

(1) For airplanes having serial numbers 145004 through 145055 that have not been modified in accordance with EMBRAER Service Bulletin 145–55–0009, dated April 7, 1998: Inspect the bolts attaching the spring tab and servo tab hinge fittings to the rear spar of the left-hand and right-hand elevators for evidence of loosening.

(2) For airplanes having serial numbers 145004 through 145103, 145105 through 145111, and 145113 through 145117: Inspect the region of the hinge fittings on the spring tab for interference of the bonding jumper on the attaching bolts with the leading edge of the spring tab.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Modification

(b) Perform follow-on corrective actions, as applicable, in accordance with EMBRAER Service Bulletin 145–55–0009, Change No. 02, dated May 19, 2000, as shown in the following table:

TABLE 1.—FOLLOW-ON CORRECTIVE ACTIONS

If * * *	And * * *	And * * *	Then * * *
(1) No discrepancy is found	.....	.....	Prior to further flight, seal the bolt heads and adjacent hinge fitting surfaces.
(2) Any loose bolt or any interference of the bonding jumpers with the leading edge of the spring tab is found.	The airplanes have serial numbers 145004 through 145055, inclusive.	The airplanes have not been modified in accordance with EMBRAER Service Bulletin 145–55–0009, dated April 7, 1998.	Prior to further flight, accomplish Part II of the service bulletin, including replacing bolts, adding washers, and changing the position of the lockwire and the bonding jumpers.
	The airplanes have serial numbers 145004 through 145055, inclusive, and 145056 through 145076, inclusive.	The airplanes have been modified in accordance with EMBRAER Service Bulletin 145–55–0009, dated April 7, 1998.	Prior to further flight, accomplish Part III of the service bulletin, including adding washers and changing the position of the lockwire and the bonding jumpers.
	The airplanes have serial numbers 145077 through 145103, inclusive; 145105 through 145111, inclusive; and 145113 through 145117, inclusive.	.....	Prior to further flight, accomplish Part IV of the service bulletin, including adding washers and changing the position of the lockwire and the bonding jumpers.

Repetitive Inspections

(c) Repeat the detailed visual inspection specified in paragraph (a) of this AD, at intervals not to exceed 400 flight hours.

Terminating Action

(d) Within 2,000 flight hours from the effective date of this AD, accomplish Part II, III, or IV, as applicable, of the service bulletin.

Alternative Methods of Compliance

(e) 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, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through

an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

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

Special Flight Permits

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

Note 4: A portion of the subject of this AD is addressed in Brazilian airworthiness directive No. 98–05–02, dated May 28, 2000.

Issued in Renton, Washington, on December 4, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–31318 Filed 12–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–17–AD]

Airworthiness Directives; Eurocopter France Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD) for Societe Nationale Industrielle Aerospatiale (currently Eurocopter France) Model AS350 and AS355 series helicopters. That AD requires inspecting the fuselage frame (frame) for a crack at the fuselage-to-tailboom interface and replacing or repairing, as necessary. That AD also requires a fastener torque check and retorquing, as necessary. This action would retain the requirements of the existing AD but would increase the inspection interval from 1,200 hours time-in-service (TIS) to 2,500 hours or 6 years TIS, whichever occurs first. This proposal would revise the time interval for inspecting the frame at the fuselage-to-tailboom interface to coincide with the inspection interval specified in the maintenance manual. The actions specified by the proposed AD are intended to eliminate confusion and unnecessary costs and to prevent a cracked frame, tailboom failure, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before February 6, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–17–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Federal Register between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this document 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 mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–SW–17–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–17–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On June 28, 1985, the FAA issued AD 85–14–06, Amendment 39–5089 (50 FR 28561, July 15, 1985) to require repetitive inspections and to repair or replace the fuselage frame at the fuselage tailboom interface. On August 8, 1985, the FAA issued AD 85–14–06 R1, Amendment 39–5121 (50 FR 37173, September 12, 1985), to require repetitive visual inspections and to repair or replace the frame, as necessary. That AD also requires fastener torque checks and re-torquing, as necessary. That action was prompted by reports of cracked frames at the fuselage-to-tailboom interface. The requirements of that AD are intended to prevent a cracked frame, tailboom failure, and subsequent loss of control of the helicopter.

Since the issuance of that AD, we have been notified that the inspection interval of the frame at the fuselage-to-tailboom interface in the current AD does not coincide with the maintenance manual. The FAA has determined that this may create confusion among operators as to when the inspections are required.

We have identified an unsafe condition that is likely to exist or develop on other Eurocopter France Model AS350 and AS355 helicopters of these same type designs. The proposed AD would supersede AD 85–14–06 R1 and would require the same actions as the existing AD except to increase the inspection interval from 1,200 hours TIS to 2,500 hours or 6 years TIS, whichever occurs first, to coincide with the maintenance manual to eliminate confusion and unnecessary costs. To compensate for the increase in the inspection interval, we propose that the initial inspection interval be reduced from 100 hours TIS to 30 hours TIS and that the visual inspection be changed to a dye-penetrant inspection.

The FAA estimates that 475 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is

estimated to be $228,000 assuming no cracked frames are discovered.

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 39–5089 (50 FR 28561, July 15, 1985) and Amendment 39–5121 (50 FR 37173, September 12, 1985), and by adding a new airworthiness directive (AD), to read as follows:

Eurocopter France: Docket No. 2000-SW–17-AD. Supersedes AD 85–14–06, Amendment 39–5089, and 85–14–06 R1, Amendment 39–5121, Docket No. 85-ASW–15.

Applicability: Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if 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 eliminate confusion and unnecessary costs and to prevent a cracked fuselage frame (frame), tailboom failure, and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect the fuselage-to-tailboom attachment bolts in accordance with paragraph (d) within 30 hours time-in-service (TIS).

(b) Inspect the fuselage-to-tailboom attachment bolts in accordance with paragraph (d) within 30 hours TIS of replacing or reinstalling a tailboom.

(c) Repeat the inspection in accordance with paragraph (d) at intervals not to exceed 2500 hours or 6 years TIS, whichever occurs first.

(d) Inspect the fuselage-to-tailboom attachment bolts for proper torque range and the frame, part number 350A21–1247–00, for a crack at the fuselage-to-tailboom interface.

(1) Procedure for inspecting proper torque range:

(i) Using a fine-point felt tip pen, mark the position of the nut relative to the assembly.

(ii) One at a time, slightly loosen each nut. Do not allow the corresponding bolt to rotate relative to the assembly.

(iii) Tighten the nut with a properly calibrated torque wrench until the mark on the nut lines up with the mark on the assembly.

(iv) Record the torque value required to line up the two marks.

(2) Interpretation of the recorded torque values for each nut:

(i) If the torque value is less than 0.3 mdaN (26 in-lbs) on any nut:

(A) Remove the tailboom.

(B) Perform a dye-penetrant inspection for a crack in the bending radius of the frame.

(C) If a crack is found, repair or replace the frame with an airworthy frame before further flight.

(ii) If the torque value is between 0.3 mdaN and 1 mdaN (26 to 88 in-lbs), re-torque to 0.75 mdaN to 0.9 mdaN (67 to 79 in-lbs).

(iii) If the torque value is equal to or greater than 1 mdaN (88 in-lbs), remove the nut and bolt and replace them with a new nut and bolt. Torque the nut to 0.75 mdaN to 0.9 mdaN (67–79 in-lbs).

Note 2: Aerospatiale Service Bulletins AS 355 No. 05.14 and AS 350 No. 05.16 pertain to the subject of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

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

(f) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on November 30, 2000.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–31319 Filed 12–7–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–122–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on Pennsylvania's responses to comments we made in regard to a proposed amendment to the Pennsylvania permanent regulatory program under the Surface Mining Control and Reclamation Act of 1997 (SMCRA). The amendment, submitted on July 29, 1998, (Administrative Record No. PA–841.07), proposed changes to the Pennsylvania program with regard to the mine subsidence control, subsidence damage repair or replacement, and water supply replacement provisions of SMCRA. The amendment submission included changes to the Bituminous Mine Subsidence and Land Conservation Act (BMSLCA) made through Act 54 and changes to regulations at 25 PA Code Chapter 89. After reviewing the amendment, we sent two letters to Pennsylvania requesting clarification of numerous issues. The letters were sent on June 21, 1999, (Administrative record number PA 841.32) and June 23, 2000, (Administrative record number PA 841.40). Pennsylvania responded to the first letter on June 1, 2000, (Administrative record number PA

841.39) and to the second on July 14, 2000, (Administrative record number PA 841.41). We are reopening the comment period to allow public input into Pennsylvania's responses to the two letters.

DATES: Written comments must be received on or before 4:00 p.m. (local time), on December 26, 2000.

ADDRESSES: Mail, hand-deliver or e-mail your written comments to Mr. Robert J. Biggi, Director, Harrisburg Field Office, at the address listed below.

You may review copies of the Pennsylvania program, the proposed amendment, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Third Floor, Suite 3C, Harrisburg Transportation Center, 415 Market Street, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036, e-mail: *bbiggi@osmre.gov*

Pennsylvania Department of Environmental Protection, Bureau of Mining and Reclamation, Rachel Carson State Office Building, P.O. Box 8461, Harrisburg, Pennsylvania 17105–8461, Telephone: (717) 787–5103

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, Telephone: (717) 782–4036.

I. Background on the Pennsylvania Program

On July 31, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and the conditions of the approval in the July 31, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning the Pennsylvania program and previous amendments are codified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Description of the Proposed Amendment

By letter dated July 29, 1998 (Administrative Record Number PA 841.07), the Pennsylvania Department of Environmental Resources (PADEP) submitted an amendment to its approved permanent regulatory program pursuant to the Federal regulations at 30 CFR 732.17(b).

The proposed rulemaking was published in the August 25, 1998, **Federal Register** (63 FR 45199). The first public comment period closed on September 24, 1998. In response to requests from several people, the comment period was reopened on September 25, 1998, (63 FR 51324).

This second comment period closed on October 19, 1998. A public hearing was held on October 13, 1998, at Washington, Pennsylvania (Administrative record numbers PA 841.21, 841.22, and 841.31). After reviewing the public comments and the information received at the public hearing and conducting our own review of the amendment, we sent Pennsylvania the two letters described above to request clarification of numerous issues. The sections of the BMSLCA that we asked Pennsylvania for additional information on are: 5.1(a)(1)—(3), 5.1(b), 5.2(a)(1) and (2), 5.2(a)(2), 5.2(b)(2), 5.2(d), 5.2(e)(1)—(3), 5.2(g), 5.2(g)(1), 5.2(h), 5.2(i), 5.2(k), 5.3(a), 5.3(c), 5.4(a)(1), 5.4(a)(2), 5.4(a)(3), 5.4(c), 5.5(a), 5.5(b), 5.5(c), 5.5(e), 5.5(g), 5.6(a), 5.6(c), and 9.1(b).

The sections of Pennsylvania's regulations at 25 PA Code Chapter 89 that we asked Pennsylvania for additional information on are: § 89.5, definitions of the terms, ''de minimis cost increase,'' ''permanently affixed appurtenant structures,'' and ''public buildings and facilities,'' § 89.35, § 89.67(b), § 89.141(d), § 89.141(d)(2), § 89.141(d)(3), § 89.141(d)(6), § 89.141(d)(9), § 89.142a(a)(3), § 89.142a(b)(1), § 89.142a(b)(2), § 89.142a(c)(2), § 89.142a(c)(3), § 89.142a(e), § 89.142a(f)(1), § 89.142a(f)(2), § 89.142a(g)(2)—(4), § 89.143a(b), § 89.145a(a)(1), § 89.145a(a)(3), § 89.145a(b), § 89.145a(d), § 89.145a(e), § 89.145a(e)(2), § 89.145a(f)(1), § 89.145a(f)(3), § 89.146a(a), § 89.146a(b)(4), § 89.152(b), § 89.154(a), § 89.154(a)(5) and (6).

The full text of our letters and Pennsylvania's responses can be obtained at the Harrisburg Field Office at the address listed above.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments only on Pennsylvania's responses to our two letters.

Written Comments

If you submit written or electronic comments on the proposed rule during the 15-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments

Please submit Internet comments as an ASCII, WordPerfect, or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS NO. PA–122–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Harrisburg Field Office at (717) 782–4036.

Availability of Comments

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at the OSM Administrative Record Room (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining

operations.'' Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of state regulatory programs and program amendments since each such program is drafted and promulgated by a specific state, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed state regulatory programs and program amendments submitted by the states must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed state regulatory program provision does not constitute a major federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The state submittal which is the subject of this rule is based upon counterpart federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the state. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart federal regulation.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 30, 2000.

George J. Rieger,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 00–31324 Filed 12–7–00; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–00–006]

RIN 2115–AE47

Drawbridge Operation Regulations; Longboat Pass and New Pass, Longboat Key, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: The Commander, Seventh Coast Guard District issued a notice of proposed rulemaking on 25 August 2000, to change the regulations governing the operation of the State Road 789 drawbridge across Longboat Pass, Manatee County, and the New Pass bridge, Sarasota County, in Longboat Key, Florida. The comment period expired on October 24, 2000. The Coast Guard has received several requests for additional time to submit comments on the proposed rule. As a result, the Coast Guard is reopening the comment period for an additional 60 days.

DATES: Comments must be received on or before February 6, 2001.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131–3050, or deliver them to room 406 at the above address between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays. The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District 909, SE 1st Avenue, room 406, Miami, FL 33131, between 8 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, at (305) 415–6743.

SUPPLEMENTARY INFORMATION: On August 25, 2000, the Coast Guard published a notice of proposed rulemaking (65 FR 51787). The NPRM proposed to change the regulations governing the operation of the State Road 789 drawbridge across Longboat Pass, Manatee County, and the New Pass bridge, Sarasota County, in Longboat Key, Florida. The comment

period ended on October 24, 2000. The Coast Guard has received requests from the U.S. Army Corps of Engineers, Manatee County, the town of Longboat Key, and the city of Sarasota for additional time to comment on this proposed rule. The Coast Guard believes additional time to comment on this notice of proposed rulemaking would be beneficial. Therefore, the Coast Guard is reopening the comment period for 60 days. All comments must be received by February 6, 2001.

Dated: November 27, 2000.

T.W. Allen,

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

[FR Doc. 00–31047 Filed 12–7–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AJ86

Loan Guaranty: Advertising and Solicitation Requirements

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) loan guaranty regulations by prohibiting advertisements or solicitations from lenders that falsely state or imply that they were issued by or at the direction of VA or any other entity of the United States Government. These provisions appear to be necessary to ensure that lenders do not provide misleading information.

DATES: Comments must be received on or before February 6, 2001.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AJ86.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: R. D. Finneran, Assistant Director for Loan Policy and Valuation (262), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–7368.

SUPPLEMENTARY INFORMATION: Under the authority of 38 U.S.C. chapter 37, VA guarantees loans made by private lenders to eligible veterans to purchase, construct, improve, or refinance their homes (the term veteran as used in this document includes any individual defined as a veteran under 38 U.S.C. 101 and 3701 for the purpose of housing loans). This document proposes to amend VA's loan guaranty regulations for both manufactured homes and conventionally built homes by adding new advertising and solicitation disclosure requirements.

We have become aware of written advertisements and solicitations from private lenders that appear to falsely state or imply that they came from VA. For example, one solicitation from a private lender stated that it was from the ''Government Loans Programs'' and contained a reference to a VA case number. Another solicitation from a private lender stated that ''[I]n accordance with regulations determined by the Department of Veterans Affairs this notice is officially issued to * * *'' Another solicitation from a private lender stated that ''The Veterans Benefit Administration known as VA, a division of the United States Department of Veterans Affairs is working with lenders to inform you * * *'' Other solicitations from private lenders stated that they were from the ''V.A. Loan Department,'' ''Veterans Department,'' ''Direct VA Streamline Department,'' ''Authorized VA Loan Center,'' and ''VA Conversion Center.'' One solicitation from a private lender not only stated on the envelope that it was from the ''Department of Veterans'' but included the statement ''Official Business, Penalty For Private Use, $300.''

Further, we have recently become aware of written advertisements and solicitations from private lenders that appear to falsely state or imply that they have been given special authority by VA to offer a unique loan product. For example, one solicitation from a private lender stated that ''you are now eligible to take advantage of the Exclusive VA STREAMLINE refinance program.'' Another solicitation from a private lender stated that ''The Veterans Administration in conjunction with * * * Mortgage offers a unique program * * *''

To address these issues regarding advertisements and solicitations, we are proposing to establish advertising and solicitation requirements. We propose that any advertisement or solicitation in any form (*e.g.,* written, electronic, oral) from private lenders concerning housing loans to be guaranteed or insured by the Secretary must not include information falsely stating or implying that it was issued by or at the direction of VA or any other department or agency of the United States and must not include information falsely stating or implying that the lender has an exclusive right to make loans guaranteed or insured by VA.

If the proposed requirements are adopted, noncompliance may lead to suspension, debarment, or limited denial of participation in the VA housing loan program pursuant to 38 CFR part 44. Also, under 38 CFR part 44, such action could affect the lender's ability to participate in other governmental programs.

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of the proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed rule would not have more than a minuscule effect on any small entities. Therefore, pursuant to 5 U.S.C. 605(b), the proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program number is 64.114.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Indians, Individuals with disabilities, Loan programs-housing and community development, Loan programs-Indians, Loan programs-veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Approved: October 31, 2000.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is proposed to be amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501, 3701–3704, 3707, 3710–3714, 3719, 3720, 3729, 3762, unless otherwise noted.

2. Section 36.4227 is added immediately after the authority citation at the end of § 36.4226 to read as follows:

§ 36.4227 Advertising and solicitation requirements.

Any advertisement or solicitation in any form (*e.g.,* written, electronic, oral) from a private lender concerning manufactured housing loans to be guaranteed or insured by the Secretary:

(a) Must not include information falsely stating or implying that it was issued by or at the direction of VA or any other department or agency of the United States, and

(b) Must not include information falsely stating or implying that the lender has an exclusive right to make loans guaranteed or insured by VA.

(Authority: 38 U.S.C. 3703, 3704)

3. Section 36.4365 is added immediately after § 36.4364 to read as follows:

§ 36.4365 Advertising and Solicitation Requirements.

Any advertisement or solicitation in any form (*e.g.,* written, electronic, oral) from a private lender concerning housing loans to be guaranteed or insured by the Secretary:

(a) Must not include information falsely stating or implying that it was issued by or at the direction of VA or any other department or agency of the United States, and

(b) Must not include information falsely stating or implying that the lender has an exclusive right to make loans guaranteed or insured by VA.

(Authority: 38 U.S.C. 3703, 3704)

[FR Doc. 00–31291 Filed 12–7–00; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–054–200027(b); FRL–6910–7]

Approval and Promulgation of Implementation Plans: Revisions to the Alabama Department of Environmental Management (ADEM) Administrative Code for the Air Pollution Control Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing approval of revisions to the Alabama Department of Environmental Management's (ADEM) Administrative Code submitted on August 10, 2000, by the State of Alabama. The revisions comply with the regulations set forth in the Clean Air Act (CAA). On August 10, 2000, the State of Alabama through ADEM submitted revisions to chapters 335–3–1, 2, 3, 4, 5, 6, 9, 12, 14, 15, and 16. In chapter 335–3–1 the definition of ''New Source'' is being clarified to indicate that it is not applicable to the definitions of new source in chapters 335–3–10 Standards of Performance for New Stationary Sources and chapter 11 National Emission Standard for Hazardous Air Pollutants, which are not part of the federally enforceable state implementation plan (SIP).

ADEM combined rule 335–3–5–.03(5) and 335–3–5–.03(6) to be consistent with Alabama Administrative Procedures Act, and revised rule 335–3–14–.05(2)(i) to be consistent with 40 CFR 51, subpart I. ADEM deleted rule 335–3–4–.08(4) pertaining to emissions from wood waste boilers at pulp mills in Autauga County. International Paper (formally Union Camp) operates the only pulp mill in Autauga County which has been upgraded and no longer requires a bubble. The Union Camp boilers are subject to other emission limits in the federally approved SIP.

ADEM revised the numbering system in chapters 335–3–1, 2, 3, 4, 5, 6, 9, 12, 14, 15, and 16 to comply with numbering system required by the Legislative Reference Service under Alabama Administrative Procedures Act.

In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before January 8, 2001.

ADDRESSES: Written comments should be addressed to Sean Lakeman, at the EPA Regional Office listed below. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

U.S. Environmental Protection Agency, Region 4, Atlanta Federal Center, Air, Pesticides, and Toxics Management Division, 61 Forsyth Street, Atlanta, Georgia 30303–3104.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman of the EPA Region 4, Air Planning Branch at (404) 562–9043 and at the above address.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Final Rules Section of this **Federal Register**.

Dated: November 8, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–30636 Filed 12–7–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6913–8]

RIN 2060–AH82

National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for the Polyvinyl Chloride (PVC) and Copolymers Production source category. These proposed NESHAP require that PVC and copolymers production facilities, which already must comply with the existing Vinyl Chloride NESHAP, continue to comply with that existing NESHAP. This proposed rule reflects EPA's determination that the hazardous air pollutants (HAP) control level resulting from compliance with the existing Vinyl Chloride NESHAP already reflects the application of maximum achievable control technology (MACT) and, thus, meets the requirements of section 112(d) of the Clean Air Act (CAA) for the PVC and Copolymers Production source category. The EPA has determined that this source category includes facilities that are major sources of HAP, including vinyl chloride, vinylidene chloride (1,1 dichloroethylene), and vinyl acetate. The EPA has classified vinyl chloride as

a known human carcinogen and vinylidene chloride as a possible human carcinogen. All of these HAP can cause noncancer health effects in humans. By proposing compliance with the Vinyl Chloride NESHAP as MACT, the EPA is promoting regulatory consistency and eliminating the costs that would be incurred by enforcing a new set of standards that likely would result in no additional HAP emissions reductions.

DATES: *Comments.* Submit comments on or before February 6, 2001.

Public Hearing: If anyone contacts the EPA requesting to speak at a public hearing by December 28, 2000, a public hearing will be held on January 8, 2001.

ADDRESSES: *Comments.* Written comments should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–99–40, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing: If a public hearing is held, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina.

Docket: Docket No. A–99–40 contains information supporting today's action. The docket is located at the U.S. EPA, 401 M Street, SW, Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Warren Johnson, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–5124, johnson.warren@epa.gov. For public hearing information, contact Maria Noell, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–5607, noell.maria@epa.gov.

SUPPLEMENTARY INFORMATION: *Comments.* Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the docket number: A–99–40. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Warren Johnson, c/o OAQPS Document Control Officer (Room 740B), U.S. EPA, 411 W. Chapel Hill Street, Durham, NC 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing

Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Maria Noell at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Noell to verify the time, date, and location of the hearing. The address, telephone number, and e-mail address for Ms. Noell are listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. If a public hearing is held, it will provide interested parties the opportunity to present data, views, or arguments concerning today's action.

Docket

The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in case of judicial review (see section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials. In addition to being available in the docket, an electronic copy of today's action will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of today's action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities

Categories and entities potentially regulated by this action include:

Category	NAICS code	SIC code	Examples of affected entities
Industry	325211	2821	Facilities that polymerize vinyl chloride monomer to produce polyvinyl chloride and/or copolymer products.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.211 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline

The information presented in this preamble is organized as follows:

I. Background
A. What is the source of authority for development of NESHAP?
B. What criteria are used in the development of NESHAP?
C. What is the history of the source category?
D. What are the health effects associated with the pollutants emitted from the PVC and Copolymers Production source category?
II. Summary of the Proposed NESHAP

A. What source category is affected by these proposed NESHAP?
B. What is PVC and copolymers production and what are the primary sources of emissions?
C. What is the affected source?
D. What are the compliance requirements in the proposed NESHAP?
E. When must an affected source comply with these proposed NESHAP?
III. Rationale for Selecting the Proposed Standards
A. What controls are used to limit HAP emissions?
B. How did we determine the basis and level of the proposed standards for new and existing sources?
C. What is the relationship of today's proposed NESHAP to other rules?
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A. Executive Order 12866, Regulatory Planning and Review.
B. Executive Order 13132, Federalism.
C. Executive Order 13084, Consultation and Coordination with Indian Tribal Governments.
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks.
E. Unfunded Mandates Reform Act of 1995.
F. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), 5 U.S.C. 601 *et seq.*
G. Paperwork Reduction Act.
H. National Technology Transfer and Advancement Act of 1995.

I. Background

A. What is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of all major sources and some area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The major sources covered by today's proposed NESHAP are new and existing sources that produce PVC and copolymers. Major sources of HAP are those that are located within a contiguous area and under common control and have the potential to emit 9.1 megagrams per year (Mg/yr) (10 tons/yr) or more of any one HAP or 22.7 Mg/yr (25 tons/yr) or more of any combination of HAP.

B. What Criteria are Used in Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures all major sources achieve the level of control already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. In considering whether to establish standards more stringent than the floor, we must consider cost, non-air quality health and environmental impacts, and energy requirements.

C. What is the History of the Source Category?

The EPA recognized that PVC and copolymer production would not be addressed by the Hazardous Organic NESHAP (HON) (40 CFR part 63, subparts G, F and H), which address the requirements of section 112(d) of the CAA for the manufacturing of synthetic organic chemical manufacturing industry (SOCMI) chemicals, including ethylene dichloride (EDC) and vinyl chloride monomer (VCM). Therefore, on July 16, 1992 (57 FR 31576), the EPA listed PVC and Copolymers Production as a separate source category. This source category was listed because we had not yet evaluated whether the existing part 61 NESHAP, specifically the Vinyl Chloride NESHAP (40 CFR part 61, subpart F) was sufficient as MACT. Now that we have evaluated it and are proposing to find it adequate, the requirements constitute MACT in accordance with CAA section 112(d) and (q)(1). In addition, as with other NESHAP issued under the authority of CAA section 112(d), today's proposed NESHAP will also be subject to CAA section 112(f).

D. What are the health effects associated with the pollutants emitted from the PVC and Copolymers Production source category?

Polyvinyl chloride and copolymer products are not considered toxic, but the VCM feedstock is toxic, and the copolymer feedstocks, when they are used, may also be toxic chemicals (*i.e.*, vinyl acetate and vinylidene chloride).

Acute (short-term) exposure to high levels of vinyl chloride in air has resulted in central nervous system effects, such as dizziness, drowsiness, and headaches in humans. Chronic (long-term) exposure to vinyl chloride through inhalation and oral exposure in humans has resulted in liver damage. There are positive human and animal studies showing adverse effects which raise a concern about potential reproductive and developmental hazards to humans from exposure to vinyl chloride. Cancer is a major concern from exposure to vinyl chloride via inhalation, as vinyl chloride exposure has been shown to increase the risk of a rare form of liver cancer in humans. The EPA has classified vinyl chloride as a Group A, known human carcinogen. In addition, VCM is explosive when airborne in concentrations between 4 and 22 percent by volume. For these reasons, special care (*e.g.*, nitrogen blankets and polymerization inhibitors) must be taken in storage and shipment of VCM, and manufacturing processes using VCM must control the VCM emissions, worker exposure, and the residual content of VCM in products.

The primary acute (short-term) effects in humans from vinylidene chloride (1,1 dichlorethylene) exposure are on the central nervous system, including central nervous system depression and symptoms of inebriation, convulsions, spasms, and unconsciousness at high concentrations. Low-level, chronic (long-term) inhalation exposure of vinylidene chloride in humans may affect the liver. Animal studies indicate that chronic exposure to vinylidene chloride can affect the liver, kidneys, central nervous system, and lungs. No studies were located regarding developmental or reproductive effects in humans, but birth defects have been reported in offspring of pregnant animals that had inhaled vinylidene chloride. Human data are considered inadequate in providing evidence of cancer from exposure to vinylidene chloride. Limited animal cancer data have shown an increase in kidney and mammary tumors, while other studies have not shown an increase in tumors. Vinylidene chloride has been classified as a Group C, possible human carcinogen.

Acute (short-term) inhalation exposure of workers to vinyl acetate has resulted in eye and upper respiratory tract irritation. Chronic (long-term) occupational exposure results in upper respiratory tract irritation, cough, and/or hoarseness. Nasal epithelial lesions and

irritation and inflammation of the respiratory tract were observed in mice and rats chronically exposed by inhalation. No information is available on the reproductive, developmental, or carcinogenic effects of vinyl acetate in humans. Some limited animal data suggest reduced body weight, fetal growth retardation, and minor skeletal fetal defects at high exposure levels. An increased incidence of nasal cavity tumors has been observed in rats exposed by inhalation. The EPA has not classified vinyl acetate for carcinogenicity.

II. Summary of the Proposed NESHAP

A. What Source Category Is Affected by These Proposed NESHAP?

The PVC and Copolymers Production source category includes all sources that are new and existing major sources that polymerize vinyl chloride monomer alone, or in combination with other materials, to produce PVC and copolymers.

We estimate there are 28 PVC and copolymer manufacturing plants operating in the United States. This source category was listed under CAA section 112 because it contains major sources of HAP. Although today's proposal applies only to these major sources in the source category, the existing part 61 NESHAP make no distinction between major and area sources and, therefore, continue to apply to both. Likewise, the existing part 61 NESHAP make no distinction between new and existing sources and, therefore, require the same emission standards for both. Rationale for why we decided that new source MACT should be the same as existing source MACT in today's proposed NESHAP is discussed in section III.B.

Although demand for PVC and copolymers has increased slightly in the last year, this increase and anticipated future increases are within the capacity of the current facilities. For this reason, we anticipate near zero growth of this source category beyond the existing sources over the next 5 years.

B. What Is PVC and Copolymers Production and What Are the Primary Sources of Emissions?

Polyvinyl chloride and copolymer products have a large number of commercial and industrial applications. It is the manufacture of the resins used to make these products that is considered PVC and copolymers production. The resins are produced in a variety of mediums resulting from one of four basic polymerization process types: suspension, emulsion, bulk, and solution. Producing these resins involves batch reactor processes where VCM is polymerized with itself as a homopolymer or copolymerized with varying amounts of vinyl acetate, ethylene, propylene, vinylidene chloride, or acrylates. The resulting resins are generally dried into nontoxic powders or granules that are compounded with auxiliary ingredients and converted into a variety of plastic end products. These end products can be used in a large number of applications, including latex paints, coatings, adhesives, clear plastics, rigid plastics, and flooring.

The PVC is not a HAP, but manufacturing PVC requires VCM, which is a HAP, as a primary feedstock, and trace amounts of unreacted VCM may linger in the PVC product. There are basically two ways for HAP to be introduced to the atmosphere from these processes: either the HAP is released from an opening or leak in the process equipment, or the residual HAP (*i.e.*, unreacted VCM) in the product become airborne. Stripping at the production stage to recover unreacted feedstock reduces the air emissions from the product by reducing the residual HAP in the product.

C. What Is the Affected Source?

The affected source is the collection of all equipment and activities necessary to produce PVC and copolymers. To determine whether a facility is affected by today's action, you should examine the applicability criteria at 40 CFR 61.60(a)(3), (b) and (c).

The following emission types (*i.e.*, emission points) are currently covered by the existing part 61 NESHAP: reactor opening losses, equipment leaks, storage vessels, process vents, hoses and lines, wastewater operations, and major releases from process upsets.

D. What Are the Compliance Requirements in the Proposed NESHAP?

As provided under the authority of CAA section 112(d) and (q), we are proposing that you comply with all the requirements of the Vinyl Chloride NESHAP, as specified at 40 CFR part 61, subpart F. The Vinyl Chloride NESHAP sets forth emission standards in the forms of numerical emission limits and work practices. The Vinyl Chloride NESHAP also sets forth all requirements for monitoring, test methods, recordkeeping, and reporting.

E. When Must an Affected Source Comply With These Proposed NESHAP?

All existing sources, as defined at 40 CFR 61.02, should already be in compliance with today's proposed NESHAP since we are proposing that owners or operators comply with all the requirements of the Vinyl Chloride NESHAP.

Therefore, we believe that the requirement to set a compliance date that is as expeditious as practicable is satisfied by setting the compliance date on [the effective date for the final rule] for existing sources. A new source must be in compliance with the NESHAP on [the effective date of the final rule] or at start up, whichever is later.

III. Rationale for Selecting the Proposed Standards

A. What Controls Are Used To Limit HAP Emissions?

Although the existing part 61 NESHAP contain standards for alternative controls, stripping is the primary control used for limiting VCM and other HAP emissions.

Through stripping operations, residual unreacted VCM in the PVC and copolymers is minimized before subsequent process steps (*e.g.*, product drying) occur. Stripping is also an economical way to recover unreacted feeds, primarily VCM, following the polymerization process. In stripping out the VCM from the product, other residual HAP are also removed. As a result, the stripping really controls all HAP by removing the unreacted chemicals from the PVC and copolymers before the product is exposed to the atmosphere during later processing steps, which typically include drying. It is important that these HAP be removed before drying, not only because dryers efficiently convey dilute HAP emissions to the atmosphere, but also because these HAP are explosive under certain conditions.

In addition to stripping, other HAP control measures include operating under a closed-vent system with add-on control (*e.g.*, flare) to incinerate HAP gases not returning to the process, minimizing the presence of HAP before opening a reactor or piece of process equipment containing VCM and other HAP, ongoing leak detection and repair (LDAR), ongoing area monitoring to sample the ambient air for the presence of VCM as a precautionary early warning of a major release, and other special care.

B. How Did We Determine the Basis and Level of the Proposed Standards for Existing and New Sources?

Because there are fewer than 30 sources in this source category, to identify the existing source MACT floor, we look at the average emission limitation achieved by the five best

performing sources. Since all 28 sources are subject to the existing part 61 NESHAP, we did not identify a group of five sources as best performers. Rather, we have identified the existing part 61 NESHAP as the existing source MACT floor.

We are aware that some States have added numerical emission limits in facilities' permits that are lower than the numerical limits specified in the part 61 NESHAP. We do not believe, however, that using these lower State limits is an appropriate basis for identifying a group of five best performers in setting a new, lower emission limit within the context of a part 63 NESHAP.

These lower State numbers are in addition to the limit in the part 61 NESHAP, and they correspond to a longer averaging time. Unlike other NESHAP which may allow quarterly or annual averaging times to achieve a limit, the part 61 NESHAP require daily compliance with the limit on an instantaneous basis. Since process variability is inherent in even normal operations in the batch processes where PVC and copolymers are produced, facilities must set operational parameters below regulatory limits to ensure that the instantaneous limits are not exceeded.

Also, these State limits are set based on the products each facility is manufacturing since PVC and copolymers vary in their ability to be stripped based on their morphology and resistance to sheer. Depending on the resins being produced, State operating permits generally stipulate lower numerical limits over a longer averaging time, in addition to the instantaneous daily limits required by the part 61 NESHAP. These permit conditions are good practice on the part of the State permitting authorities for ensuring control consistency over longer periods for the specific facilities. However, we do not believe that new part 63 NESHAP, based on the average of the best quarterly or yearly limits, would result in any greater emissions reductions beyond the current levels resulting from the part 61 NESHAP since we would have to factor in the wide range of product variability to set limits achievable across the source category.

We are also proposing new source MACT equivalent to existing source MACT. Although some processes may be able to strip and achieve a HAP concentration lower than the limit specified in the Vinyl Chloride NESHAP, such a lower limit would not be applicable across the source category due to variations in the processes and product characteristics.

After stripping, some unreacted VCM will remain suspended in the product. The amount of VCM remaining in a product varies with the product design. Excessive stripping could sheer some of the products while other products can strip to very low levels of residual HAP. Also, these residual HAP generally provide a necessary part of the product design characteristics. The existing part 61 NESHAP took this into account when requiring residual VCM to be limited to below 400 parts per million (ppm) for all cases except for certain dispersion resins.

We have also not identified any work practice standards more stringent than those required by the Vinyl Chloride NESHAP, which require that equipment be vapor tight and any HAP release to the atmosphere be less than 10 ppm VCM. In comparison to LDAR provisions or low concentration cutoffs (typically at 20 ppm) in other NESHAP, the Vinyl Chloride NESHAP work practice standards are more stringent.

C. What Is the Relationship of Today's Proposed NESHAP to Other Rules?

The Vinyl Chloride NESHAP apply to sources that manufacture EDC, VCM, and PVC and copolymers. The sources that manufacture EDC and VCM are not the subject of today's proposal because they are already subject to the HON, which is the NESHAP for the source category that produces SOCMI chemicals. The PVC and copolymers are not considered SOCMI chemicals since they are produced in batch process reactors, which are distinctly different than the continuous process units employed by the SOCMI chemical manufacturers. Hence, PVC and copolymers were not included in the HON applicability because they are a separate source category and unique to SOCMI.

Since the Vinyl Chloride NESHAP reside in 40 CFR part 61, and since today's proposal incorporates the existing standards, it is appropriate that the General Provisions to part 61 continue to apply. Today's proposed NESHAP affect only new and existing ''major sources,'' which is a concept not used in part 61. Therefore, in order to properly address applicability as it pertains to part 63 standards, certain terms and provisions in the General Provisions of part 63 that delineate MACT applicability, construction and reconstruction (specifically, provisions in §§ 63.1 and 63.5) would also need to apply. Since today's proposed NESHAP require that reconstructed sources comply with the new source MACT requirements, they would be subject to the new source requirements under part 61 even though the term ''reconstruction'' is not used in part 61. Within §§ 63.1 and 63.5, the provisions in § 63.1(a)(9) through (12) regarding notices, time periods, and postmarks; and the references in §§ 63.5, 63.6, 63.9 and 63.10 regarding administrative compliance, notification and recordkeeping procedures should be disregarded since these procedures are already defined in the part 61 General Provisions.

We anticipate that all existing sources (an estimated 28 sources) are major sources, and that any new sources will also be major sources, as defined by the CAA. Part 70 requires that all major sources retain reports and records for 5 years under § 70.6(a)(3)(ii)(B), even though the 40 CFR part 61 NESHAP only require that reports and records be retained for 3 years. Under part 70, affected sources are expected to be in compliance with applicable standards on a continuous basis, and exceedances or excursions outside the established limits or parameter ranges, including those that occur during periods of startup, shutdown or malfunction, are considered deviations under § 70.6(a)(3)(iii)(B).

The 40 CFR part 61 NESHAP do not rely on the recent publication of performance specification (PS) 8 for volatile organic compound (VOC) continuous emissions monitoring system (CEMS), PS 9 for gas chromatographic CEMS, or the quality assurance requirements for VOC measurement in 40 CFR part 60, appendix F, procedure 1. We are soliciting comment on whether or not we should require PS 8 and 9, and appendix F in lieu of, or as an option to, the monitoring requirements in § 61.68.

IV. Summary of Environmental, Energy, and Economic Impacts

There are no environmental, energy or economic impacts anticipated from these proposed NESHAP beyond the current requirements of 40 CFR part 61, subpart F, which are already in effect.

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation 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.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a ''significant regulatory action'' because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

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 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 NESHAP. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed NESHAP.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to 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 EPA'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, it must include a certification from EPA's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. 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 in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. No tribal governments own or operate PVC and copolymer production facilities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to today's proposed NESHAP.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns 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, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives that EPA considered.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it is based solely on technology performance. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, this proposed rule has been determined not to be ''economically significant'' as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

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 by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 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's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. There are no cost burdens introduced by today's proposed rule. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (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 proposed rule on small entities, small entity is defined as: (1) a small business whose parent company has fewer than 750 employees; (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 proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined, following discussions with State and industry representatives, that the scope of today's proposed rule includes no small entities as defined above. But, even if a small entity was within the scope of today's proposed rule, no adverse impact to the small entity would result, since today's proposed rule creates no new requirements or burdens for any of the affected entities.

The EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues

G. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in 40 CFR part 61, subpart F (Vinyl Chloride NESHAP) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* and has assigned OMB control No. 2060–0071. An Information Collection Request (ICR) document was prepared by EPA (ICR No. 186.08), and a copy may be obtained from Sandy Farmer by mail at Office of Environmental Information, Collection Strategies Division (2822), U.S. EPA, 1200 Pennsylvania Avenue NW, Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260–2740. You may also download a copy off the Internet at *http://www.epa.gov/icr.*

Today's proposed NESHAP (*i.e.*, proposed 40 CFR part 63, subpart J) require that PVC and copolymers production facilities continue to comply with 40 CFR part 61, subpart F. Therefore, today's proposed NESHAP add no additional information collection burden. Consequently, no ICR has been prepared for today's proposed NESHAP.

H. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

This proposal references 40 CFR part 61, subpart F. Since there are no new standard requirements in these proposed NESHAP, and there are no new requirements resulting from specifying subpart F of part 61, EPA is not proposing/adopting any voluntary consensus standards in today's proposed NESHAP.

The EPA takes comment on proposed compliance demonstration requirements proposed in this rulemaking and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commenters should also explain why this proposed rule should adopt them in lieu of EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if method other than Method 301, 40 CFR part 63, appendix A, was used).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 4, 2000.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

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

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

2. Part 63 is proposed to be amended by adding subpart J to read as follows:

Subpart J—National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production

Sec.

What This Subpart Covers

63.210 What is the purpose of this subpart?
63.211 Am I subject to this subpart?
63.212 What parts of my facility does this subpart cover?

63.213 When do I have to comply with this subpart?

Standards and Compliance Requirements

63.214 What are the requirements I must comply with?

Other Requirements and Information

63.215 What General Provisions apply to me?
63.216 Who administers this subpart?
63.217 What definitions apply to this subpart?

What This Subpart Covers

§ 63.210 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for polyvinyl chloride (PVC) and copolymers production.

§ 63.211 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a PVC plant, as defined in 40 CFR 61.61(c) that is a major source of hazardous air pollutants (HAP) emissions or that is located at, or is part of, a major source of HAP emissions.

(b) You are a major source of HAP emissions if you own or operate a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year.

§ 63.212 What parts of my facility does this subpart cover?

(a) This subpart applies to each new or existing affected source at PVC and copolymer production operations.

(b) The affected source subject to this subpart is the collection of all equipment and activities necessary to produce PVC and copolymers. This subpart applies to the PVC and copolymers production operations that meet the applicability criteria at 40 CFR 61.60(a)(3).

(c) An affected source does not include portions of your PVC and copolymers production operations that meet the criteria at 40 CFR 61.60(b) or (c) .

(d) An affected source is a new affected source if you commenced construction or reconstruction of the affected source after December 8, 2000.

(e) An affected source is existing if it is not new.

§ 63.213 When do I have to comply with this subpart?

(a) If you have a new affected source, you must comply with this subpart according to paragraphs (a)(1) and (2) of this section:

(1) If you startup your affected source before [the effective date of this subpart], then you must comply with the standards in this subpart no later than [the effective date of this subpart].

(2) If you startup your affected source after [the effective date of this subpart], then you must comply with the standards in this subpart upon startup of your affected source.

(b) If you have an existing affected source, you must be in compliance with the standards in this subpart by [the effective date of this subpart].

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP and an affected source subject to this subpart, paragraphs (c)(1) and (2) of this section apply.

(1) An area source that meets the criteria of a new affected source as specified at § 63.212(d) must be in compliance with this subpart upon becoming a major source.

(2) An area source that meets the criteria of an existing affected source as specified at § 63.212(e) must be in compliance with this subpart upon becoming a major source.

Standards and Compliance Requirements

§ 63.214 What are the requirements I must comply with?

You must meet all the requirements in 40 CFR part 61, subpart F, as they pertain to processes that manufacture polymerized vinyl chloride. These requirements include the emission standards and compliance, testing, monitoring, notification, recordkeeping, and reporting requirements.

Other Requirements and Information

§ 63.215 What General Provisions apply to me?

(a) All the provisions in 40 CFR part 61, subpart A, apply to this subpart.

(b) The provisions in subpart A of this part also apply to this subpart as specified in (b)(1) through (3) of this section.

(1) The general applicability provisions in § 63.1(a)(1) through (8) and (13) through (14).

(2) The specific applicability provisions in § 63.1(b) through (e) except for the reference to § 63.10 for recordkeeping procedures.

(3) The construction and reconstruction provisions in § 63.5 except for the references to § 63.6 for compliance procedures and the references to § 63.9 for notification procedures.

§ 63.216 Who administers this subpart?

(a) This subpart can be administered by us, the EPA, or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the primary authority to administer and enforce this subpart. You should contact your EPA Regional Office to find out if the authority to implement and enforce this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section subpart E of this part, the authorities contained in paragraphs (b)(1) through (5) of this section are retained by the Administrator of EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of alternatives to the non-opacity emissions standards in §§ 63.211, 63.212 and 63.214 under 40 CFR 61.12(d) . Where these standards reference another subpart, the cited provisions will be delegated according to the delegation provisions of the referenced subpart.

(2) [Reserved]

(3) Approval of major alternatives to test methods under 40 CFR 61.13(h) and as defined in § 63.90.

(4) Approval of major alternatives to monitoring under 40 CFR 61.14(g) and as defined in § 63.90.

(5) Approval of major alternatives to recordkeeping and reporting under 40 CFR 61.10 and as defined in § 63.90.

§ 63.217 What definitions apply to this subpart?

Terms used in this subpart are defined in: the Clean Air Act; 40 CFR 61.02 of this chapter, the NESHAP General Provisions; 40 CFR 61.61, the Vinyl Chloride NESHAP; and, § 63.2, in regard to terms used in §§ 63.1 and 63.5.

[FR Doc. 00–31332 Filed 12–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6913–1]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed deletion of the University of Minnesota Rosemount Research Center Superfund Site (Site) from the National Priorities List (NPL).

SUMMARY: The EPA proposes to delete the releases from the University of Minnesota Rosemount Research Center Superfund site (Site) from the NPL and requests public comment on this action. The NPL constitutes appendix B to Part 300 of the National and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. EPA has determined that the Site currently poses no significant threat to public health or the environment, as defined by CERCLA, and therefore, further remedial measures under CERCLA are not appropriate. We are publishing this proposed rule without prior notification because the Agency views this as a noncontroversial revision and anticipates no dissenting comments. A detailed rationale for this approval is set forth in the direct final rule. If no dissenting comments are received, the deletion will become effective. If EPA receives dissenting comments, the direct final action will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Comments concerning this Action must be received by January 8, 2001.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, U.S. Environmental Protection Agency (SR–6J), 77 W. Jackson, Chicago, IL 60604. Comprehensive information on this Site is available through the public docket which is available for viewing at the Site Information Repository at the following location: the Minnesota Pollution Control Agency, 520 Lafayette Road North, Saint Paul, Minnesota 55155–4184.

FOR FURTHER INFORMATION CONTACT: Gladys Beard Associate Remedial Project Manager at (312) 886–7253, written correspondence can be directed to Ms. Beard at U.S. Environmental Protection Agency, (SR–6J) 77 W. Jackson Blvd., Chicago, IL 60604.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Action which is located in the Rules Section of this **Federal Register**.

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

Dated: November 28, 2000.

Elissa Speizman,

Acting Regional Administrator, EPA Region V.

[FR Doc. 00–31192 Filed 12–7–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[PR Docket No. 92–257; RM–9664; FCC 00–370]

Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: In this document, the Commission proposes to amend the rules governing Automated Maritime Telecommunications Systems (AMTS) and high seas public coast stations. The Commission proposes, among other things, to designate licensing regions and authorize one licensee for each currently unassigned AMTS frequency block on a geographic basis; to allow partitioning and disaggregation for AMTS geographic licensees, disaggregation for site-based AMTS licensees, and partitioning for most high seas public coast station licensees; and to establish competitive bidding procedures to resolve mutually exclusive applications for AMTS and high seas public coast spectrum. These proposed rules should increase the number and types of communications services available to the maritime community.

DATES: Comments are due February 6, 2001, Reply Comments are due March 8, 2001.

ADDRESSES: Parties who choose to file comments by paper must file an original and four copies to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th St., SW., Room TW–A325, Washington, DC 20554. Comments may also be filed using the Commission's Electronic Filing System, which can be accessed via the Internet at www.fcc.gov/e-file/ecfs.html.

FOR FURTHER INFORMATION CONTACT: Keith Fickner, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau at (202) 418–0680.

SUPPLEMENTARY INFORMATION:

1. The Commission's Third Notice of Proposed Rule Making (3rd NPRM), PR Docket No. 92–257, FCC 00–370, adopted October 13, 2000, and released on November 16, 2000. The full text of this 3rd NPRM is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20037. The full text may also be downloaded at: *http://www.fcc.gov/Wireless/Orders/2000/fcc00370.txt.* Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Summary of the 3rd NPRM

2. The Commission proposes a transition from the site-based licensing approach to geographic area licensing because such an approach would speed assignment of subsequent AMTS licenses, reduce processing burdens on the Commission, facilitate the expansion of existing AMTS systems and the development of new AMTS systems, eliminate inefficiencies arising from the intricate web of relationships created by site-specific authorization, and enhance regulatory symmetry.

3. The Commission seeks comment on whether the use of band manager licensing may be an appropriate alternative method of accomplishing the objectives that it strives to achieve through its partitioning and disaggregation rules. Band managers would be a class of Commission licensee that would engage in the business of making spectrum available for use by others through private, written contracts.

4. The Commission seeks comment, in light of its continuing commitment to take measures to ensure that the current and future communications needs of the public safety community are addressed, on whether it should take any steps to facilitate use of AMTS spectrum by public safety entities, including setting aside some channels for public safety use.

5. The Commission proposes to modify the requirement that AMTS stations must serve a waterway because it is inconsistent with geographic licensing and could prevent service from being offered in some licensing areas. Therefore, the Commission seeks comment on its proposal that stations may be placed anywhere within a licensee's service area so long as marine-originating traffic is given priority and incumbent operations are protected. It also seeks comment on its

proposal that licensees whose service areas encompass certain major waterways be required to provide coverage to those waterways, as is required of VHF public coast geographic licensees.

6. The Commission proposes to authorize two geographic area licensees in each licensing area, with each licensee authorized to use one of the two AMTS frequency blocks because it concludes that this will promote competition in the maritime CMRS marketplace. Under this proposal, incumbent AMTS licensees would be permitted to operate their systems indefinitely, and incumbents and geographic licensees would have to afford each other interference protection.

7. The Commission proposes to license HF public coast station radiotelephone frequency pairs individually, rather than in blocks, due to this frequency's propagation characteristics and insufficient demand.

8. The Commission also proposes to redistribute radiotelephone frequency pairs by permitting MF private coast stations to use unassigned public coast station radiotelephone frequency pairs in the 2 MHz band for non-CMRS services because it will promote the more efficient use of maritime spectrum and reduce congestion for MF private coast licensees.

9. Finally, the Commission concludes that the engineering study requirement for new AMTS stations that are not fill-in stations should not be eliminated because it continues to be a critical mechanism for protecting television reception.

Regulatory Flexibility Analysis

10. As required by the RFA, the Commission has prepared this present IRFA of the possible significant economic impact on small entities of the policies and rules proposed in the Third Further Notice of Proposed Rule Making (3rd FNPRM). 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 3rd FNPRM provided in the item. The Commission will send a copy of the 3rd FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the 3rd FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**. See id.

A. Need for, and Objectives of, the Proposed Rules

11. Our objective is to determine whether it is in the public interest, convenience, and necessity to simplify our licensing process for AMTS and high seas public coast stations. These proposals include (1) converting licensing of AMTS coast station spectrum from site-based to geographic area licensing, (2) simplifying the AMTS licensing procedures and rules, (3) increasing AMTS and high seas public coast station licensee flexibility to provide service over a wide area, and (4) employing the Commission's Part 1 standardized competitive bidding procedures to resolve mutually exclusive applications. In addition, we temporarily suspend the acceptance and processing of certain AMTS and high seas public coast station applications because we believe that after the public has been placed on notice of our proposed rule changes, continuing to accept new applications under the current rules would impair the objectives of this proceeding. These proposed rules and actions should increase the number and types of communications services available to the maritime community.

B. Legal Basis:

1. Authority for issuance of this item is contained in sections 4(i), 4(j), 7(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 157(a), 302, 303(b), 303(f), 303(g), 303(r), 307(e), 332(a), and 332(c).

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

13. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''

14. The proposed rules would affect licensees using AMTS and high seas public coast spectrum. In the Third Report and Order in this proceeding, the Commission defined the term ''small entity'' specifically applicable to public coast station licensees as any entity employing less than 1,500 persons, based on the definition under the Small Business Administration rules applicable to radiotelephone service providers. *See,* Amendment of the Commission's Rules Concerning Maritime Communications, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853, 19893 (1998) (citing 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812). Since the size data provided by the Small Business Administration does not enable us to make a meaningful estimate of the number of AMTS and high seas public coast station licensees that are small businesses, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that only 12 radiotelephone firms out of a total of 1,178 such firms which operated in 1992 had 1,000 or more employees. Thus, we estimate that no fewer than 1,166 small entities will be affected. Any entity that is capable of providing radiotelephone service is eligible to hold a public coast license. Therefore, we seek comment on the number of small entities that use AMTS and high seas public coast spectrum and the number of small entities that are likely to apply for licenses under the various proposals described herein.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

15. We will award licenses by competitive bidding where mutually exclusive applications are filed. Prior to auction, all applicants, including small businesses, will be required to submit an FCC Form 175, OMB Clearance Number 3060–0600. If we use small business definitions for the purpose of providing bidding credits to auction participants, then all small businesses that choose to participate in these services will be required to demonstrate that they meet the criteria set forth to qualify as small businesses, as required under part 1, Subpart Q of the Commission's Rules. *See* 47 CFR part 1, Subpart Q. Any small business applicant wishing to avail itself of small business provisions will need to make

the general financial disclosures necessary to establish that the small business is in fact small. The estimated time for filling out an FCC Form 175 is 45 minutes. Each applicant will have to submit information regarding the ownership of the applicant, any joint venture arrangements or bidding consortia that the applicant has entered into, and, if claiming eligibility for bidding credits, financial information demonstrating that the applicant qualifies as a small business. Applicants that do not have audited financial statements available will be permitted to certify the validity of their financial showings. While many small businesses have chosen to employ attorneys prior to filing an application to participate in an auction, the rules are intended to enable a small business to file an application on its own using the short form application preparation guidelines that are made available by the Commission before any auction. When an applicant wins a license, it will be required to submit an FCC Form 601 license application, which will require technical information regarding the applicant's proposals for providing service and other information. This application will require information provided by an engineer who will have knowledge of the system's design. The estimated time for completing an FCC Form 601 is one hour and fifteen minutes.

E. Significant Alternatives Minimizing the Economic Impact on Small Entities

16. 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.

17. In the 3rd FNPRM, the Commission proposes that the part 1 unjust enrichment provisions will govern partitioning and disaggregation arrangements involving AMTS licenses owned by small businesses that were afforded a bidding credit and later elect to partition or disaggregate their licenses to an entity that does not qualify as a small business. The alternative to applying the unjust enrichment provisions would be to allow an entity who had benefited from the special bidding provisions for small businesses to become unjustly enriched by partitioning or disaggregating its licenses to parties that do not qualify for such benefits.

18. The 3rd FNPRM solicits comment on a variety of alternatives set forth herein. Any significant alternative presented in the comments will be considered.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

List of Subjects 47 CFR Parts 13 and 80

Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–31309 Filed 12–7–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. RSPA–97–2762; Notice 3]

RIN 2137–AD24

Controlling Corrosion on Hazardous Liquid and Carbon Dioxide Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: We are proposing to change some of the corrosion control standards for hazardous liquid and carbon dioxide pipelines. The proposed changes are based on our review of the adequacy of the present standards compared to similar standards for gas pipelines and acceptable safety practices. The proposed changes are intended to improve the clarity and effectiveness of the present standards and reduce the potential for pipeline accidents due to corrosion.

DATES: Persons interested in submitting written comments on the proposed rules must do so by February 6, 2001. Late filed comments will be considered so far as practicable.

ADDRESSES: You may submit written comments by mailing or delivering an original and two copies to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays when the facility is closed. Or you may submit written comments to the docket electronically at the following web address: *http://dms.dot.gov.* See the **SUPPLEMENTARY INFORMATION** section for additional filing information.

FOR FURTHER INFORMATION CONTACT: L. M. Furrow by phone at 202–366–4559, by fax at 202–366–4566, by mail at U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, or by e-mail at *buck.furrow@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION:

Filing Information, Electronic Access, and General Program Information

All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone who wants confirmation of mailed comments must include a self-addressed stamped postcard. To file written comments electronically, after logging onto http://dms.dot.gov, click on ''Electronic Submission.'' You can read comments and other material in the docket at this Web address: http://dms.dot.gov. General information about our pipeline safety program is available at this address: http://ops.dot.gov.

Background

We have reviewed the corrosion control standards in 49 CFR part 195 for hazardous liquid and carbon dioxide pipelines to see if any standards need to be made clearer, more effective, or consistent with acceptable safety practices. Although the likelihood of corrosion-caused accidents harming people or the environment is relatively low, we undertook the review because corrosion is the second leading cause of reported accidents on hazardous liquid pipelines, and improving the standards has the potential to reduce the number of future accidents.[1]

The review began September 8, 1997, when we held a public meeting on how the part 195 corrosion control standards and the corrosion control standards for gas pipelines in 49 CFR part 192 might be improved (62 FR 44436; Aug. 21, 1997). To attract participation by corrosion experts, we held the public meeting in Oakbrook, Illinois, in conjunction with meetings of NACE International, a professional technical society dedicated to corrosion control.

[1] For the period 1986 through 1999, corrosion caused 25 percent of all incidents reported under Part 195; 3 percent of all deaths; 2 percent of all injuries; and 19 percent of all property damage.

The Oakbrook meeting focused on whether we should incorporate by reference NACE Standard RP0169–96, ''Control of External Corrosion on Underground or Submerged Metallic Piping Systems,'' as a substitute for all or some of the part 192 and part 195 standards. Two other significant topics were whether part 192 and part 195 corrosion control standards need to be updated to ensure safety, and whether gas, hazardous liquid, and carbon dioxide pipelines should be subject to the same corrosion control standards.

For technical and other reasons, including the document's non-mandatory style, most meeting participants and subsequent commenters opposed incorporating the entire NACE Standard RP0169–96 by reference. But participants agreed universally that part 192 and part 195 corrosion control standards are largely sufficient, and although some changes may be needed, the standards should be generally the same.

Toward this end, we began to consider whether the more comprehensive part 192 standards, possibly with some changes, would be appropriate for hazardous liquid and carbon dioxide pipelines. For technical input, we met from time to time with representatives of NACE, the pipeline industry, and state pipeline safety agencies. At these meetings, we also examined whether the part 192 standards need to be more effective or clearer. As guidance for this assessment, the meeting participants developed the following principles:

- Evaluate existing data and use the evaluation to assess the need to change standards.
- Continue to improve public safety and environmental protection.
- Assess the need for corrosion control standards throughout the national pipeline system based on the risk associated with different parts of the system.
- Upgrade regulations to allow for future changes in pipeline industry technology and operating practices as appropriate.
- Strive for uniform interpretation/enforcement.
- To the extent practicable, involve all interested parties in assessing the need to change standards.
- Use the new cost/benefit policy framework being developed for RSPA's pipeline safety advisory committees in determining the costs and benefits of potential changes to standards.
- Achieve balance between performance and prescriptive language.
- Develop performance measures to assess the effectiveness of corrosion control programs.
- Focus on managing corrosion to maintain pipeline integrity.
- Provide adequate regulatory flexibility to allow operators to implement alternative measures that meet the performance requirements of the corrosion regulations.

The meetings left us with various concerns about the total effectiveness and clarity of the part 192 corrosion control standards and the suitability of applying those standards to hazardous liquid and carbon dioxide pipelines. We also knew that the National Association of Pipeline Safety Representatives (NAPSR), the Gas Piping Technology Committee (GPTC), and the National Transportation Safety Board (NTSB) had at various times recommended changes to part 192 and part 195 corrosion control standards. So, to get public comment on our concerns and the recommended changes, we held another public meeting on April 28, 1999, in San Antonio, Texas (64 FR 16885; April 7, 1999). We also invited comments on the idea of allowing operators to follow their own corrosion management plans or NACE Standard RP0169–96 as an alternative to all or part of the part 192 or part 195 corrosion control standards.

San Antonio Meeting

At least 180 persons attended the San Antonio public meeting. However, only a few persons made oral statements, which are summarized as follows:

The Interstate Natural Gas Association of America (INGAA) said that based on the record of low numbers of deaths and injuries, not much change in the part 192 standards is needed, even if corrosion is the second leading cause of reported pipeline incidents. INGAA attributed the good safety record to proper management of risk, saying it would be nonproductive if changes to generally applicable safety standards caused operators to shift their limited resources away from higher risk areas. INGAA emphasized the use of cost/benefit assessment in determining the need for new or revised standards. At least two other meeting participants (Enron and Columbia Gulf) expressed support for INGAA's views.

The American Gas Association (AGA) and American Public Gas Association (APGA) jointly made a statement similar to INGAA's and pointed out that DOT safety statistics do not justify changes in the present standards. AGA/APGA further noted that corrosion is not the second leading cause of incidents on gas distribution lines, but the last cause, resulting in about 4 percent of all reported incidents. The views of AGA/APGA were supported by at least one other meeting participant (Columbia Gulf) and by a majority of the persons who submitted written comments to the docket after the meeting. These subsequent written comments are condensed below under the ''Comments after San Antonio'' subheading.

Another participant, Global Cathodic Protection, submitted a statement, backed by 72 corrosion control practitioners, that cathodic protection criteria in appendix D of part 192 are preferred to the criteria in NACE Standard RP0169–96.

Equilon Enterprises, an operator of petroleum pipelines, did not support the alternative of corrosion management plans, because of the burden of review by government and the possibility that government reviewers and operator personnel may not be equally qualified to evaluate the plans. In addition, Equilon said that removing unnecessary differences between part 192 and part 195 standards would minimize confusion and disagreements between operators and government inspectors. On other points raised in the meeting notice, Equilon preferred that part 195 not refer to NACE Standard RP0169–96. But, Equilon did support the need for qualification requirements for bosses who lead corrosion control programs, and it thought the part 192 standards should disallow the use of bare unprotected pipe.

An engineering consultant said the ''instant-off'' approach to measuring cathodic protection was excessive. Similarly, the Equilon representative said that across-the-board use of the negative 850 mV criterion with instant-off readings is not productive, and that the 100 mV criterion is more cost-effective in many cases. A university professor said that corrosion control technicians do not do instant-off tests the same way. But another engineering consultant noted that NACE has a companion standard that covers instant-off tests: TM0497–97, Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems.

Comments Submitted After the San Antonio Meeting

Following the San Antonio public meeting, the docket remained open to receive written comments on the matters addressed in the meeting notice. Sixty-two persons filed written comments. These commenters included pipeline safety agencies in Arizona and Iowa, two corrosion control firms (Corrosion Control International and Global Cathodic Protection), two

operators of petroleum pipelines (Mobil Corporation and Tosco Refining Company), seven pipeline trade associations (American Gas Association (AGA), American Public Gas Association (APGA), Interstate Natural Gas Association of America, New England Gas Association, New York Gas Group, Ohio Gas Association, and American Petroleum Institute), six operators of interstate gas pipelines (CMS Energy, Columbia Energy Group, Duke Energy, Enron Gas Pipeline Group, KN Energy, and Phillips Pipe Line Company), and 43 local gas distribution companies.

General Comments. Most of the written comments specifically address RSPA concerns and other topics in the San Antonio meeting notice. Still, there were some general comments: Two gas distribution operators said that requiring operators to cathodically protect cast iron or ductile iron pipe would have a big impact on the distribution industry. These operators also suggested that small fittings made of copper or brass and steel fittings with a corrosion resistant coating should be exempt from cathodic protection requirements. Other rule changes they suggested were intended to yield savings by specifying that electronic or remote data collection can be used to meet the monitoring requirements and by extending the interval for monitoring rectifiers from every 2 months to twice a year, particularly for newly manufactured devices.

AGA/APGA welcomed minor rule changes that address clarity, consistency, technology, but said that sweeping changes are not justified by the safety data. They advised us to use cost/benefit assessment and non-regulatory approaches to perceived problems. Of the 62 commenters, 42 expressed support for the joint comments of AGA/APGA. Others, such as Mobil Corporation, Enron, and the New England Gas Association, similarly expressed doubt that substantial changes to the standards were warranted in view of the incident record. One commenter, Kansas Gas Service, backed up its claim that the present standards are adequate by referring to its own record: no reported incidents for the period 1989–98. Tosco Refining stated that making the corrosion control maintenance requirements in Parts 192 and 195 alike would mitigate compliance difficulties for companies that operate both gas and petroleum pipelines.

Comments on RSPA Concerns: This section of the preamble includes summaries of comments that specifically address RSPA's concerns about whether certain provisions of Part 192 corrosion control standards need to be improved. The AGA/APGA comments are identified because many commenters supported the AGA/APGA views. Summaries of comments on changes recommended by NAPSR, GPTC, and NTSB, on alternatives, and on topics included in the ''Public Participation'' section of the meeting notice are discussed afterward.

Section 192.453 Personnel Qualification

RSPA Concern: In view of the proposed rules on qualification of pipeline personnel (63 FR 57269; Oct. 27, 1998) [2], are more specific qualification standards needed for individuals who direct or carry out corrosion control procedures?

Comments: All 23 comments on this concern opposed changing § 192.453. They said either the existing rule is adequate or the proposed rules on personnel qualification are sufficient. Most of these commenters also opposed establishing specific technical qualifications for company managers. They said these personnel need more business than technical knowledge to assure that corrosion and other maintenance problems are handled economically. AGA/APGA suggested that any remaining qualification issues be addressed in a non-regulatory way through ongoing discussions with industry training representatives at DOT's Transportation Safety Institute.

Section 192.455 External Corrosion: New Pipelines

RSPA Concern: Should a cathodic protection system be installed on offshore pipelines in less than one year after the pipeline is constructed, for example, 60 days, because of the strong corrosiveness of salt water?

Comments: The two comments on this concern favored a 60-day installation period.

RSPA Concern: Is it in the interest of safety to exempt pipelines in particular environments and temporary pipelines from the coating and cathodic protection requirements?

Comments: Three commenters opposed the present exemptions, either because corrosion leaks can happen rapidly or because the installations are so varied they should be handled by waivers rather than general exemption. At the same time, three commenters supported the exemptions, contending that corrosion is usually a long term problem, many environments are not conducive to corrosion, and required monitoring would detect incipient problems. AGA/APGA said that safety data do not suggest the present exemptions have been detrimental to safety.

Section 192.457 External Corrosion: Existing Pipelines

RSPA Concern: Should existing compressor, regulator, and measuring station piping continue to be excluded from the requirement to cathodically protect effectively coated transmission line pipe?

Comments: Five commenters said the piping should not be excluded, arguing that it does not differ from pipe that must be protected and that failures at these locations may have serious consequences. Three other commenters said they cathodically protect all their compressor, regulator, and measuring station piping.

RSPA Concern: Is the present requirement to cathodically protect certain older existing pipelines only in areas of ''active corrosion'' adequate for public safety? If not, what would be a cost-effective alternative standard?

Comments: Only one commenter opposed the present rule. This commenter contended that the entire pipeline needs protection because spot protection moves the corrosion problem to other places on the line. However, 13 commenters, including AGA/APGA, supported the present rule, saying that it is a cost-effective approach to protecting older lines, particularly since not all corrosion is detrimental to safety. Another commenter thought that adding cathodic protection to old bare lines in mildly corrosive or non-corrosive soils could accelerate the rate of any localized corrosion that might exist.

RSPA Concern: Is the meaning of ''active corrosion'' clear and technically sound? If not, how should it be changed?

Comments: None of the 12 comments advocated changing the present definition of ''active corrosion.'' Five commenters, including AGA/APGA, thought that possible changes would be more prescriptive, less flexible, or not appropriate for all areas.

Section 192.461 External Corrosion: Coating

RSPA Concern: Should the implicit requirement to coat field joints and repairs be expressly stated?

Comments: Four commenters said this requirement should be expressly stated. But four other commenters worried that singling out any item would raise questions about items not listed.

[2] After the San Antonio meeting, RSPA adopted final rules on personnel qualification that closely paralleled the proposed rule (64 FR 46853; Aug. 27, 1999).

Similarly, another commenter thought the implicit requirement was adequate for field joints.

RSPA Concern: Does coating need to be compatible with the anticipated service conditions, including the effects of temperature?

Comments: Four commenters agreed that such service compatibility is necessary. And one of these commenters suggested that a performance standard would improve the effectiveness of the existing rule in this regard. However, another commenter said the existing rule is adequate because service compatibility is implied.

RSPA Concern: For offshore pipelines, during installation, are special measures necessary to protect against damage to coating, including field joint coating; and, to avoid mechanical damage, are special coatings needed on J-tubes, I-tubes and pipelines installed by the bottom tow method?

Comments: There were no comments on this concern.

Section 192.463 External Corrosion: Cathodic Protection Criteria

RSPA Concern: Are the cathodic protection system criteria in appendix D of part 192, 300 mV shift and E-log-I, obsolete, since they are not in section 6 of NACE Standard RP0169–96? If so, should operators be allowed to continue to use them on existing pipe, but not new pipe?

Comments: Three commenters favored dropping these two criteria or at least E-log-I from appendix D. Six other commenters said they would support dropping the criteria only if the criteria were known to be ineffective or no longer in use. One commenter acknowledged using E-log-I and two others said the two criteria are adequate and should be allowed. AGA/APGA and one other commenter said the NACE standard recognizes the use of other successful criteria, such as those in appendix D, and that safety data do not show that the 300 mV shift and E-log-I criteria result in higher leak rates or incidents.

Section 192.465 External Corrosion: Monitoring

RSPA Concern: Does the sampling basis prescribed for inspecting short sections of mains or transmission lines not in excess of 100 feet and separately protected service lines provide effective corrosion control, particularly as it applies to service lines that supply gas to public buildings?

Comments: Two commenters thought the present rule is ineffective, asserting that a single inspection is not enough to assess safety over a 10-year period, no matter if public buildings are involved. However, four commenters argued that because corrosion is slow, there has been no problem in sampling pipe to detect corrosion before it becomes critical. And two commenters said sampling is a cost-effective way to monitor scattered sites. AGA/APGA and two other commenters said that safety data do not show that sampled pipe has more corrosion-caused leaks than other pipe. Several commenters foresaw difficulties in defining a ''public building.'' Only one commenter thought that more frequent monitoring is needed for lines leading to public buildings because of the increased potential for serious consequences.

Section 192.467 External Corrosion: Electrical Isolation

RSPA Concern: What remedial action is needed when an electrical short in a casing results in inadequate cathodic protection of the pipeline outside the casing?

Comments: Five commenters said these shorts should be cleared because other options are ineffective and imposing more current to offset the short could have adverse effects. But two other commenters said that clearing shorts can be costly if the line must be taken out of service or replaced, and that there is no consensus on adequate remediation. Another observation by one commenter was that the electrical isolation requirements are not needed since cathodic protection has to meet the criteria for adequacy.

RSPA Concern: Should newly constructed offshore pipelines be electrically isolated from bare steel platforms unless both are protected as a single unit?

Comments: The lone commenter who addressed this concern said that isolation is needed, yet concluded that a rule change was not needed because annual surveys will identify any problem.

RSPA Concern: Is electrical isolation needed where contact with aboveground structures would adversely affect cathodic protection?

Comments: One commenter said we should require isolation in all such cases. Three commenters argued that while isolation is needed a rule change is not, because annual surveys will identify any problem. Three other commenters argued that isolation is not needed if the alternative of sufficient local protection is applied.

Section 192.471 External Corrosion: Test Leads

RSPA Concern: Are accessible test leads needed on offshore risers that are electrically isolated and not accessible for testing?

Comments: The two commenters who addressed this concern said the present rule is adequate because operators must demonstrate adequate cathodic protection, which necessitates test leads.

RSPA Concern: For aluminum pipelines, should all test leads be insulated aluminum conductors and installed to avoid harm to the pipe?

Comments: There were two comments on this concern. One said test leads and connection material must be compatible with aluminum. The other said test leads must be insulated aluminum conductors and installed to avoid harm to the pipe.

Section 192.473 External Corrosion: Interference Currents

RSPA Concern: Where light rail systems exist, should operators specifically be required to identify and test for stray currents and keep records of the test results?

Comments: Four commenters said such a specific requirement was needed for light rail. But three commenters disagreed, arguing the present rule is adequate because it requires operators to test for all sources of stray current, including large junk yard magnets and electric cranes.

Section 192.475 Internal Corrosion

RSPA Concern: Are special requirements needed to deal with the problem of internal corrosion in storage field piping, as evidenced by piping leaks in West Virginia and several Midwestern states?

Comments: Three commenters felt the present rule is adequate for all situations and specific requirements for storage fields are not needed. In contrast, one commenter thought the rule should specifically recognize the problems posed by such piping and require more coupons or traps where liquid might collect, pipe design that avoids liquid collection, use of lined pipe, periodic pigging, or dehydration. Another commenter thought operators should have to prepare a procedure and follow it to minimize internal corrosion.

Section 192.479 Atmospheric Corrosion: General

RSPA Concern: Should new and existing pipelines be subject to the same protection requirements?

Comments: One commenter saw no need to change the distinction between new and existing pipelines.[3] Six others

[3] For new aboveground pipelines, protection is required everywhere the pipeline is exposed to the

Continued

supported treating all aboveground pipelines alike regardless of age, but two of these commenters said the rule should apply only to ''active corrosion,'' not to all corrosion.

RSPA Concern: Is protection needed where corrosion is a light surface oxide or where corrosion will not likely affect the safe operation of the pipeline before the next scheduled inspection?

Comments: Six commenters thought the rule should be changed to exclude surface oxide because it does not affect pipe integrity. However, one commenter thought surface oxide indicates a coating problem that operators should identify and track through continuing surveillance. One other commenter said that even if corrosion is more than superficial, if there is no question of safety before the next inspection, then there is no present need for remedial action. Another commenter recommended limiting the rule to ''active corrosion'' to exclude both superficial corrosion and corrosion that would not likely advance to an unacceptable stage before the next inspection.

RSPA Concern: Is special protection needed in the splash zone of offshore pipelines and at soil to air interfaces of onshore pipelines?

Comments: Three of the four comments on this concern thought the existing corrosion rules for buried and aboveground protection are adequate. The fourth commenter said any need for special protection would be recognized during required inspections.

Section 192.481 Atmospheric Corrosion: Monitoring

RSPA Concern: Should the inspection interval for onshore pipelines be extended beyond 3 years in view of the generally low incidence of serious problems on protected pipelines?

Comments: Two commenters said the present 3-year monitoring cycle is not too burdensome. In contrast, seven commenters recommended extending the inspection period beyond 3 years, saying that atmospheric corrosion is a long-term process. Six of these commenters recommended inspection every 5 years, an interval coincident with the interval of gas leakage surveys. One other commenter suggested the rule let operators determine what inspection intervals are appropriate for the pipelines involved.

RSPA Concern: For onshore pipelines, are more frequent inspections needed at soil-to-air interfaces, under thermal insulation, at disbonded coatings, and at pipe supports?

Comments: The consensus of the four comments on this concern was that no more frequent inspections than annual are needed at these locations. Two commenters said the corrosion problem at these locations is too site-specific for a general inspection rule requiring removal of coating or jackets.

RSPA Concern: For offshore pipelines, are more frequent inspections needed under poorly bonded coatings and at splash zones, support clamps, and deck penetrations?

Comments: There were no comments on this concern.

Section 192.491 Records

RSPA Concern: Should operators keep records of findings of non-corrosive conditions if

Section 192.455 Is Changed To Remove the Benefit of Such Findings?

Comments: Two commenters agreed that if records of non-corrosive conditions no longer have a purpose, the recordkeeping requirement should be removed. But another commenter thought records of exposed pipe inspections under § 192.459 should be kept even if no corrosion is found. This commenter thought such records would be useful in surveillance under § 192.613 and in evaluating the significance of damaged pipe or coating.

RSPA Concern: Is the period for keeping corrosion control monitoring records, ''as long as the pipeline remains in service,'' necessary for safety or accident investigation? If not, what is an appropriate period?

Comments: One commenter believed the present retention period is needed to provide a very helpful general history of pipelines. But another commenter said that old records are never used once adverse conditions are corrected. Two commenters suggested the retention period could be reduced to 5 years or two inspection cycles, whichever is longer. A similar comment was 5 years or the next inspection cycle, whichever is longer.

Recommendations To Change Standards

National Association of Pipeline Safety Representatives

Recommendation: With regard to §§ 192.457 and 192.465, NAPSR recommended changes to clarify the meaning of an ''electrical survey'' and where alternatives to electrical surveys may be used.

Comments: Three commenters reported that the State-Industry Regulatory Review Committee (SIRRC) had reached a consensus on ''electrical survey'' and alternatives. SIRRC was formed by NAPSR and industry representatives to work out differences of opinion over NAPSR's 1992 recommendations to revise part 192.[4] In a report transmitted to RSPA by a letter dated May 3, 1999, SIRRC concludes that electrical surveys are seldom used on distribution systems, so there is no advantage to requiring electrical surveys as a preferred corrosion inspection method on distribution systems. SIRRC further concludes that if electrical surveys are not used, all available information should be used to determine if active corrosion exists. Set out below are SIRRC's suggested revisions of § 192.457(b)(3) and § 192.465(e). SIRRC also said that in the suggested revision, ''pipeline environment'' refers to whether soil resistivity is high or low, wet or dry, contains contaminants that may promote corrosion, or has any other known condition that might influence the probability of active corrosion.

[192.457(b)(3)] Bare or coated distribution lines. The operator shall determine the areas of active corrosion by electrical survey or by analysis and review of the pipeline condition. Analysis and review shall include, but is not limited to, leak repair history, exposed pipe condition reports, and the pipeline environment. For the purpose of this section, an electrical survey is a series of closely spaced pipe-to-soil readings over a pipeline which are subsequently analyzed to identify any locations where a corrosive current is leaving the pipe.

[192.465(e)] (i) For transmission pipelines, after the initial evaluation required by paragraphs (b) and (c) of § 192.455 and paragraph (b) of § 192.457, each operator shall, not less than every 3 years at intervals not exceeding 39 months, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator shall determine the areas of active corrosion by electrical survey, or where an electrical survey is impractical, by analysis and review of the pipeline condition. Analysis and review shall include, but is not limited to, leak repair history, exposed pipe condition reports, and the pipeline environment.

(ii) For distribution pipelines, after the initial evaluation required by paragraphs (b) and (c) of § 192.455 and paragraph (b) of § 192.457, each operator shall, not less than every 3 years at intervals not exceeding 39 months, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator shall determine the areas of active corrosion by electrical survey or by analysis and review of

atmosphere, unless the operator can demonstrate that a corrosive atmosphere does not exist. For old pipelines, protection is required only where harmful corrosion is found.

[4] NAPSR's recommendations were published in Notice 2 of Docket No. PS–124 (58 FR 59431; Nov. 9, 1993).

the pipeline condition. Analysis and review shall include, but is not limited to, leak repair history, exposed pipe condition reports, and the pipeline environment.

(iii) For the purpose of this section, an electrical survey is a series of closely spaced pipe-to-soil readings over a pipeline which are subsequently analyzed to identify any locations where a corrosive current is leaving the pipe.

Recommendation: With regard to § 192.459, NAPSR recommended we require operators to record the condition of protective coatings whenever they inspect exposed portions of buried pipeline, arguing the records would provide a useful history of the condition of the pipelines as well as evidence that exposed pipe had been inspected as required.

Comments: Three commenters reported that SIRRC reached a consensus on recording the condition of coating when inspecting exposed pipe. SIRRC said that coating condition is important in evaluating the overall condition of a pipeline, and that this information helps meet continuing surveillance and active corrosion rules. SIRRC's suggested revision of § 192.459 follows:

Whenever an operator has knowledge that any portion of a buried pipeline is exposed, the exposed portion must be examined to determine the condition of the coating, or if the pipeline is bare or the coating is deteriorated, the exterior condition of the pipe. A record of the examination results shall be made in accordance with § 192.491(c). If external corrosion is found, remedial action must be taken to the extent required by § 192.483 and the applicable paragraphs of §§ 192.485, 192.487, or 192.489.

Recommendation: With regard to § 192.467(d), NAPSR recommended changes that would require operators to test pipeline casings annually for electrical isolation, and to clarify what must be done to minimize pipeline corrosion if isolation is not achieved.

Comments: Three commenters reported that SIRRC did not agree on whether shorted casings are a problem or on the need to test casings, but agreed that § 192.483 should be amended to include options for dealing with shorted casings. SIRRC said its suggested options are consistent with common industry practice. SIRRC also recognized that the options were not intended as a substitute for proper cathodic protection of pipe under § 192.463. SIRRC's suggested revision of § 192.483 follows:

(d) If it is determined that a casing is electrically shorted to a pipeline, the operator shall: (1) clear the short, if practical; (2) fill the casing with a corrosion inhibiting material; (3) monitor for leakage with leak detection equipment at least once each calendar year at intervals not exceeding 15 months; or (4) conduct an initial inspection with an internal inspection device capable of detecting external corrosion in a cased pipeline, and repeat at least every 5 years at intervals not to exceed 63 months.

Recommendation: With regard to § 192.479(b), NAPSR recommended that regardless of the date of installation, all aboveground pipelines or portions of a pipeline that are exposed to the atmosphere be cleaned and either coated or jacketed with a material suitable for the prevention of atmospheric corrosion, unless the pipeline is in a non-corrosive atmosphere.

Comments: Two commenters reported that SIRRC reached a consensus that all aboveground pipe should be subject to the same protection requirement. SIRRC's suggested revision of § 192.479, which would remove the present distinction between pipelines installed before and after particular dates, is set forth below. SIRRC also explained that the term ''active corrosion'' does not include non-damaging corrosive films.

[192.479] (a) Each aboveground pipeline or portion of a pipeline that is exposed to the atmosphere must be cleaned and either coated or jacketed with a material suitable for the prevention of atmospheric corrosion. An operator need not comply with this paragraph, if the operator can demonstrate by test, investigation, or experience in the area of application that active corrosion does not exist.

(b) If active corrosion is found on an aboveground pipeline or portion of pipeline, the operator shall (1) take prompt remedial action consistent with the severity of the corrosion to the extent required by the applicable paragraphs of §§ 192.485, 192.487, or 192.489; and (2) clean and either coat or jacket the areas of atmospheric corrosion with a material suitable for the prevention of atmospheric corrosion.

Recommendation: With regard to the provision in § 192.487(a) that permits general corrosion in distribution line pipe to be repaired instead of replaced, NAPSR recommended that the provision refer to generally accepted guidelines for determining what corroded areas may be repaired.

Comments: Two commenters reported that SIRRC did not address this issue. In addition, these commenters suggested we allow operators to assess the serviceability of distribution line pipe that has wall thickness less than 30 percent of nominal wall thickness instead of requiring the replacement of such pipe.

Recommendation: With regard to § 192.489(b), NAPSR recommended that we clarify that internal sealing is not an appropriate method of strengthening graphitized pipe.

Comments: Two commenters reported that SIRRC agreed to drop this recommendation, since advances in technology may produce strength enhancing liners.

Gas Piping Technology Committee

The following recommendations are from an April 1995, rulemaking petition by GPTC:

Recommendation: Remove from § 192.467 the requirement that pipe be electrically isolated from metallic casings. GPTC argued there are no safety benefits from clearing shorted casings.

Comments: There were no comments on this recommendation. But see the comments above on § 192.467.

Recommendation: Amend §§ 192.465 and 192.481 to allow operators to take up to 39 months to carry out inspections of unprotected pipelines that must be done at 3-year intervals. GPTC said the extra time would add flexibility to the standards, with no reduction in safety.

Comments: The one comment on this recommendation supported the 39-month period but preferred a 5-year interval to match the interval of leakage surveys. Also, see the comments above on §§ 192.465 and 192.481.

National Transportation Safety Board

As a result of a 1996 accident on a butane pipeline operated by Koch Pipeline Company near Lively, Texas, NTSB recommended two changes to the Part 195 corrosion control standards:

Recommendation: Revise Part 195 to require pipeline operators to determine the condition of pipeline coating whenever pipe is exposed and, if degradation is found, to evaluate the coating condition of the pipeline. (P–98–35)

Comments: There were no comments on this recommendation. But see the SIRRC comment above on § 192.459.

Recommendation: Revise Part 195 to include performance measures for the adequate cathodic protection of liquid pipelines. (P–98–36)

Comment: The only comment favored adding to Part 195 either Appendix D or NACE cathodic protection criteria.

Alternatives

In the San Antonio meeting notice, we suggested two alternatives to the present corrosion control standards: corrosion management plans and NACE Standard RP0169–96. Many operators get excellent results by applying pipeline-specific plans that contain corrosion control methods and management techniques not required by Part 192 or Part 195 standards. NACE Standard

RP0169–96 is widely accepted as the most authoritative source of up-to-date pipeline corrosion control practices.

Comments: Two commenters favored corrosion management plans, saying they would be consistent with the risk-based approach to regulation and cost-effective, since many operators already use them. They also said that to qualify a pipeline for exemption from the standards, the plans should be designed to produce equal or better results than the standards. However, another commenter opposed the plan alternative, arguing that the review and evaluation process would further dilute government and industry resources and detract from higher priority safety matters. And the American Petroleum Institute opposed the plan alternative, saying that corrosion should be treated as part of an overall integrity management plan that may be developed after the conclusion of RSPA's risk management demonstration projects.

Topics 4 and 6 under the next heading drew additional comments on the alternatives.

Topics of Particular Interest

1. Whether any existing standards deter or disallow the use of new technologies, and, if so, how.

Comments: The two comments on this topic were that while none of the standards disallows the use of new technology, unclear standards may deter such use.

2. The costs and benefits of any suggested changes to standards and alternatives to standards.

Comments: The only comment was that we should apply cost/benefit analysis to any suggested changes.

3. The amount of time operators may need to prepare for compliance with any suggested standards or alternatives.

Comments: The only comment was that the time needed for compliance depends on the suggested rule change.

4. With regard to the corrosion management plan and NACE Standard alternatives—

a. The bases for evaluating the adequacy of corrosion management plans.

Comments: Two commenters said the primary basis should be whether corrosion is mitigated by the plan. AGA/APGA and another commenter suggested we defer further consideration of the plan alternative until completion of work by the State/Industry/DOT Regulatory Alternative Feasibility Team, which is considering risk-based alternatives to safety standards.

b. The best way to facilitate agency review of operator decisions under the alternatives (*e.g.*, prior notification, reporting, recordkeeping).

Comments: Both comments on this topic were that we should review the decisions the same as we review decisions in operators' operating and maintenance plans.

c. Whether NACE Standard RP0169–96 is adequate for pipeline corrosion control and, if so, should we incorporate it by reference in our corrosion control standards?

Comments: Only one commenter thought NACE Standard RP0169–96 would be a cost-effective alternative to existing corrosion control standards. Although another commenter said it would be all right to reference NACE Standard RP0169–96, the commenter also said it would be better to use it as a basis for changing the standards. Ten other commenters opposed using NACE Standard RP0169–96. Of these, two said the document is not adequate by itself, and it would complicate the standards if only parts were referenced. AGA/APGA and two other commenters said NACE Standard RP0169–96 is too conservative and too costly to apply, but AGA/APGA and another two commenters thought it could serve as guidance for corrosion management plans. The reason given by one commenter for opposing NACE Standard RP0169–96 was that it does not distinguish non-hazardous corrosion from corrosion detrimental to public safety.

5. For hazardous liquid pipelines—

a. Whether additional standards are needed to further reduce the possibility of damage to environmentally sensitive areas.

Comments: One commenter thought Part 195 should cross reference Appendix D or NACE RP0169 criteria for cathodic protection.

b. If Part 192 standards were applied to hazardous liquid pipelines, the changes, if any, that would be needed to account for differences between gas and liquid pipelines.

Comments: There were no comments on this topic.

6. For gas distribution systems—

a. Root causes of corrosion leaks on coated, uncoated, protected, and unprotected metallic lines.

Comments: AGA/APGA and one other commenter said that corrosion leaks on distribution lines have a low probability of resulting in reportable incidents. Three additional commenters said that corrosion leaks on properly protected pipe are rare, and that most corrosion leaks occur on unprotected bare steel that is too costly to protect. These commenters contended the best approach to combating corrosion leaks is through aggressive leak surveys.

b. Descriptions of operating/maintenance practices to minimize corrosion leaks on cathodically unprotected lines.

Comments: Six commenters reported the use of a ranking system to prioritize segments of bare steel pipe for replacement, based on age, location, leaks, size, and cathodic protection. Other practices included replacement rather than repair of bare steel, and not uprating or reconnecting cast iron, ductile iron, or bare steel pipe. Another commenter said its practices are designed to enhance economic value rather than just meet Part 192 requirements.

c. Descriptions of risk-based corrosion management programs.

Comments: The only commenter said a plan should preserve the intent of the code but allow for geography and operating condition differences.

d. The best approach to monitoring corrosion control in urban wall-to-wall paved areas.

Comments: One commenter suggested taking readings at test stations no further than one block (660 feet) apart, while another advised 1200 feet apart. Still another commenter stressed the importance of creating access openings.

7. The amount of buried piping at compressor, regulator, and measuring stations that is not cathodically protected.

Comments: Three commenters said all their piping in these locations is protected. AGA/APGA said the data are not available, but the piping poses a low risk.

8. Explicit examples of adequate compliance with particular standards that have had varied interpretations.

Comments: AGA/APGA reported that while government compliance personnel interpret some standards inconsistently, the safety statistics support adequate compliance.

9. To provide an acceptable level of safety on existing pipelines, must cathodic protection preserve the pipeline indefinitely or merely slow the rate of corrosion until the pipeline has to be rehabilitated or replaced?

Comments: Two commenters said the decision should be based on a cost/benefit assessment, considering the possible use of new materials and the future need to move or replace a pipeline due to construction by others. One other comment was that corrosion can only be mitigated and to try to do otherwise would be too expensive.

Proposed Subpart H—Corrosion Control

In view of the above concerns, recommendations, and comments, we are proposing to add to part 195 a new subpart H called Corrosion Control. Subpart H would prescribe corrosion control standards for new and existing steel pipelines to which Part 195 applies. Concerns, recommendations, and comments that pertain primarily to the corrosion control standards in Part 192 will be addressed in a future rulemaking proceeding on gas pipelines.

Because commenters showed little enthusiasm for the alternatives of NACE Standard RP0169–96 and corrosion management plans, we did not include either alternative in proposed Subpart H (except as provided in proposed § 195.567 regarding cathodic protection criteria). Nevertheless, because NACE Standard RP0169–96 is so widely respected, we would like to keep the floor open for further discussion of the merits of adopting it as an overall corrosion control standard for pipelines. In this regard, we invite interested persons to comment again on the pros and cons of referencing the entire NACE Standard RP0169–96 as an alternative to proposed Subpart H. This request for comment is not a rulemaking proposal. We recognize that a further notice of proposed rulemaking would be required before the entire NACE Standard RP0169–96 could be incorporated by reference as a Part 195 safety standard.

Proposed Subpart H includes many standards that are identical to present corrosion control requirements in Part 195 and standards that are substantially like present requirements in Part 192. The proposed subpart also includes standards that, while based on present Part 192 requirements, include changes we think are beneficial improvements, considering acceptable safety practices. We do not intend that proposed subpart H results in a lessening of current requirements. Each of the sections in proposed Subpart H is discussed below.

Section 195.551 Scope.

Proposed § 195.551 characterizes the activities that are covered by the proposed standards in subpart H (i.e., protecting steel pipelines against external, internal, and atmospheric corrosion). Section 195.551 is informational in nature and would not impose any obligations.

Like the present corrosion control standards in part 195 (§§ 195.236, 195.238, 195.242, 195.244, 195.414, 195.416, and 195.418), proposed Subpart H would apply only to steel pipelines. In contrast, comparable corrosion control standards for gas pipelines (subpart I of Part 192) apply to pipelines made of any metal. However, because hazardous liquid and carbon dioxide pipelines are made of steel almost exclusively, such broad coverage is not warranted for pipelines regulated by part 195.

Nevertheless, under § 195.8, operators must give us an opportunity to review the safety of any pipeline that is to be constructed with a material other than steel. In the case of a non-steel metallic pipeline, that review would include the operator's plans for corrosion control.

You should note that ''breakout tanks'' [5] come within the scope of proposed subpart H, because part 195 defines ''pipeline'' to include breakout tanks (§ 195.2). Consistent with the convention stated in § 195.1(c), proposed subpart H standards applicable to breakout tanks include standards that concern breakout tanks specifically and, to the extent applicable, standards that concern pipeline systems, or pipelines, generally. Proposed standards that concern only pipe, such as §§ 195.583 and 195.585, do not apply to breakout tanks because these standards do not affect parts of pipelines other than pipe.

Section 195.553 Qualification of Supervisors

The new personnel qualification standards in subpart G of part 195 (64 FR 46866; Aug. 27, 1999) apply to individuals who perform covered tasks on pipelines, including regulated corrosion control activities. However, supervision of covered tasks is not, itself, a covered task. So supervision of corrosion control activities does not come under Subpart G.

We know that prevention of corrosion-caused accidents does not depend solely on how well personnel perform covered tasks on pipelines. Prevention also depends on the correctness of critical decisions that flow from those tasks. Indeed, many Part 195 corrosion control standards require operators not only to perform tasks on pipelines, but to decide if corrective action is needed as a result of the tasks. For example, under § 195.416(d), operators must periodically inspect bare pipe and then determine if cathodic protection is needed.

Individuals assigned to perform covered corrosion control tasks on pipelines, such as collecting pipe-to-soil data, may be qualified under subpart G without knowing what corrective action, if any, should be taken as a result of the tasks. Generally these critical corrosion control decisions are made by supervisory personnel who are in charge of carrying out the corrosion control procedures under § 195.402(c). It is reasonable, we think, that individuals who direct others to carry out corrosion control procedures should have sufficient knowledge of the procedures so they understand what they are directing.

At present, § 195.403(c) regulates the qualifications of individuals assigned to supervise the performance of corrosion control procedures. This rule requires each operator to ''require and verify that its supervisors maintain a thorough knowledge of that portion of the procedures established under § 195.402 for which they are responsible to insure compliance.'' However, § 195.403(c) has been changed. On October 28, 2002, this rule will apply only to supervisors of emergency response procedures (64 FR 46866). Consequently, we are proposing, under § 195.553, to preserve the substance of § 195.403(c) as it now applies to supervisors of corrosion control procedures.

Section 195.555 External Corrosion Control; Applicability

Proposed § 195.555 designates the pipelines covered by proposed §§ 195.557, 195.559, and 195.561. As stated below, these three proposed standards are identical to the present corrosion control standards in §§ 195.238, 195.242, and 195.244 governing coating, cathodic protection, and test leads. Like the standards they would replace, the proposed standards would apply only to pipelines constructed, relocated, replaced, or otherwise changed after §§ 195.238, 195.242, and 195.244 went into effect and to certain converted pipelines (see § 195.5(b)). The effective dates of §§ 195.238, 195.242, and 195.244 are given in § 195.401(c) and vary by pipeline. Proposed § 195.555 cross-references §§ 195.401(c) and 195.5(b).

One other existing corrosion control standard, § 195.236, applies to the same pipelines as §§ 195.238, 195.242, and 195.244. But this standard, which requires protection against external corrosion, is written in terms that may be too general. We think the standard adds nothing substantive to the more specific requirements for external corrosion protection in §§ 195.238 and 195.242. So we are proposing to drop § 195.236 and not include it in proposed subpart H.

[5] ''Breakout tank'' is defined in § 195.2 as ''a tank used to (a) relieve surges in a hazardous liquid pipeline system or (b) receive and store hazardous liquids transported by a pipeline for reinjection and continued transportation by pipeline.''

Section 195.557 External Corrosion Control; Protective Coating

Proposed § 195.557 is identical to § 195.238, which prescribes standards for external coating on certain buried or submerged pipeline components.

Section 195.559 External Corrosion Control; Cathodic Protection System

Proposed § 195.559 is identical to § 195.242, which requires certain buried or submerged facilities to be cathodically protected.

Section 195.561 External Corrosion Control; Test Leads

Proposed § 195.561 is substantially the same as § 195.244, which prescribes standards for the installation of test leads to measure cathodic protection on certain onshore pipelines. However, we are also proposing that at the connection to the pipeline, each bared test lead wire and bared metallic area must be coated with an electrical insulating material compatible with the pipe coating and the insulation on the wire. This provision is now in effect for gas pipelines under § 192.471(c).

Section 195.563 External Corrosion Control; Additional Cathodic Protection Requirements

Proposed § 195.563 is comparable to § 195.414(a), which requires all effectively coated pipelines to be cathodically protected, except for piping in breakout tank areas and pump stations. To avoid any duplication of proposed § 195.559, proposed § 195.563 would apply only to pipelines that are not protected under proposed § 195.559. Also, we omitted the compliance dates in § 195.414(a) from proposed § 195.563 because the dates have passed.

Section 195.565 External Corrosion Control; Examination of Buried Pipeline When Exposed

Proposed § 195.565 is comparable to existing § 195.416(e), which requires operators to investigate the extent of active corrosion found on exposed pipelines. We recently revised a parallel standard, § 192.459, to clarify the means and bounds of corrosion investigations on exposed gas pipelines (64 FR 56978; Oct. 22, 1999). In view of this rule change, we used § 192.459 as a model for proposed § 195.565 to provide the same clarity for similar investigations required on hazardous liquid and carbon dioxide pipelines. We believe this proposal and the associated recordkeeping under proposed § 195.587 are consistent with SIRRC's suggested changes to § 192.459 quoted above in the discussion of NAPSR's § 192.459 recommendation. Under proposed § 195.565, operators may use indirect methods, including electrical surveys or smart pigs, besides excavation and observation to look for corrosion in the vicinity of an exposed portion of pipeline.

During the course of looking for corrosion on an exposed pipeline, operators observe the condition of protective coating on the pipeline. Proposed § 195.565 would codify this inherent step by requiring operators to first see if the coating is deteriorated before they examine the exposed pipeline for corrosion. Operators' records of inspections preserve information about examinations of exposed pipe for future use, such as assessing the condition of the pipeline for purposes of corrosion control. We think the combination of proposed § 195.565 and records of examinations of exposed pipe would provide an adequate response to NTSB recommendation P–98–35 that part 195 require operators to determine the condition of external coating on exposed pipelines. Proposed § 195.587 (see below) would require operators to keep records of examinations of exposed pipe for as long as the pipe remains in service rather than 2 years as now required by § 195.404(c)(3).

Section 195.567 External Corrosion Control; Cathodic Protection Criteria

NTSB has recommended that Part 195 include performance measures for the adequacy of cathodic protection (recommendation P–98–36). We support NTSB's recommendation. Consequently, we are proposing, in § 195.567, that cathodic protection comply with the criteria and other considerations in section 6 of NACE Standard RP0169–96.

In developing this proposal, we considered that in our experience operators universally apply either NACE criteria or criteria in appendix D of part 192 to determine the adequacy of cathodic protection on pipelines that come under part 195. Similarly, the comments we received on performance measures for cathodic protection were divided between the NACE criteria and the appendix D criteria. And in its April 1995 report of a review of the part 195 standards, NAPSR supported either set of criteria.

While NACE and Appendix D criteria overlap in many respects, two Appendix D criteria (300 mV shift and E-log-I) are not among the NACE criteria. We believe they were omitted because they are outmoded and lack technical validation; and the comments did not dissuade us of this concern. Given our uncertainty about appendix D, we felt compelled to limit our proposal to section 6 of NACE Standard RP0169–96.

Still it is important to recognize that under proposed § 195.567 operators would not have to use only criteria included in section 6 of NACE Standard RP0169–96. Paragraph 6.2.1 of NACE Standard RP0169–96 permits operators to use any criteria that achieves corrosion control comparable to that attained with criteria included in section 6. In addition, paragraph 6.2.1 permits operators to continue to use on existing pipelines criteria that have been successfully applied to those pipelines. Thus proposed § 195.567 would not deny operators the opportunity to use appendix D criteria that are not included in section 6 of NACE Standard RP0169–96 as long as the operators can meet the tests of comparability or successful application stated in paragraph 6.2.1 for the use of alternative criteria. Although section 6 of NACE Standard RP0169–96 does not provide measures of comparability or successful application, to comply with paragraph 6.2.1, we believe there would have to be an absence of corrosion leaks on the pipeline between cathodic protection inspections. And, if the integrity of the pipeline has been checked between cathodic protection inspections by an internal inspection device, pressure testing, or direct examination, there would have to be no signs of metal loss due to corrosion.

On the issue of correct application of the negative (cathodic) 0.85 volt criterion, we find no difference between the NACE and appendix D criteria. Both require that voltage drops other than those across the structure-to-electrolyte boundary must be ''considered'' for valid interpretation of measurements taken for the negative (cathodic) 0.85 volt criterion. NACE explains that consideration means the application of sound engineering practice in determining the significance of voltage drops by methods such as measuring or calculating the voltage drop, reviewing the historical performance of the cathodic protection system, evaluating the physical and electrical characteristics of the pipe and its environment, and determining whether or not there is physical evidence of corrosion.

Section 195.569 External Corrosion Control; Monitoring

Proposed § 195.569(a) is substantially the same as § 195.416(a), which requires annual tests of the adequacy of cathodic protection. The only difference is that proposed § 195.569(a) references proposed § 195.567 as the measure of adequacy. Proposed § 195.569(b) is

identical to § 195.416(c), which requires bimonthly inspections of cathodic protection rectifiers. Although proposed § 195.569(d) has no parallel in part 195, it is comparable to § 192.465(c), which requires periodic inspections of items critical to cathodic protection. We think such inspections are common practice on pipelines subject to part 195. Proposed § 195.569(e) is identical to § 195.416(j), which requires inspections of systems used to protect the bottoms of aboveground breakout tanks.

Proposed § 195.569(c) is comparable to existing § 195.416(d), which requires electrical inspection of unprotected ''bare pipe'' [6] at least every 5 years to determine if protection is needed. However, like § 192.465(e), proposed § 195.569(c) would clarify that the purpose of the inspections is to detect ''active corrosion'' and would allow operators to use alternative means of determining active corrosion where an electrical survey is impractical. The term ''active corrosion'' would be defined essentially as it is in § 192.457(c), but with the additional consideration of risk to the environment. Moreover, as SIRRC recommended for gas pipelines under § 192.465(e) (see above), the alternative means of determining active corrosion would have to include an analysis and review of the pipeline's condition, based on leak repair history, exposed pipe inspection records, and the pipeline environment. In accordance with SIRRC's recommendation, we also included definitions of ''electrical survey'' and ''pipeline environment'' in proposed § 195.569(c).

Another difference between proposed §§ 195.569(c) and 195.416(d) is that, like § 192.465(e), proposed § 195.569(c) would require inspections of all unprotected pipelines, not just unprotected bare pipe. The impact of this change would be on unprotected buried piping in breakout tank areas and pump stations. At present, part 195 does not have a periodic inspection requirement for corrosion on unprotected piping in breakout tank areas and pump stations. [7] Only minor costs should result from this change in coverage, for we believe that periodic inspection of unprotected piping in breakout tank areas and pump stations is a common industry practice. The requirements for initial electrical inspection of bare pipelines (§ 195.414 (b)) and of piping in breakout tank areas and pump stations (§ 195.414(c)) have not been included in proposed Subpart H because the periods allowed for compliance have expired.

We have not proposed to increase the minimum frequency of inspections from every 5 years to every 3 years, which is the minimum frequency required by § 192.465(e) for inspecting unprotected gas pipelines. Our safety data do not show that increasing the minimum frequency to every 3 years would be likely to result in fewer reported corrosion-caused accidents on hazardous liquid or carbon dioxide pipelines. Moreover, the ASME B31.4 Code, a set of voluntary safety standards widely followed by operators of pipelines subject to part 195, specifies a minimum frequency of every 5 years for inspecting unprotected pipelines. While NACE Standard RP0169–96 requires periodic inspections to determine the need to protect unprotected pipelines, it does not prescribe the frequency of those inspections.

We also considered the need to propose a standard comparable to § 192.465(d), which requires gas pipeline operators to take ''prompt'' remedial action to correct any deficiencies detected by monitoring external corrosion control. But we decided such a proposal is unnecessary because § 195.401(b) requires operators to correct within a reasonable time any condition that could adversely affect safe operation, and if an immediate hazard exists, to cease operating the affected facility until the condition is corrected. Also, § 195.401(b) regulates the timing of corrective responses to any unsafe corrosion control deficiency, not just deficiencies in external corrosion control.

Section 195.571 External Corrosion Control: Electrical Isolation

Proposed § 195.571 is comparable to § 192.467, which requires electrical isolation on gas pipelines to provide for adequate cathodic protection and safeguards for insulating devices. Such isolation is also a common practice on pipelines subject to part 195. However, we are not proposing to include the requirements of § 192.467(c) concerning isolation of pipelines from metallic casings. We agree with GPTC and commenters who believe the safety need to clear shorted casings is not apparent. Therefore, we have not included in proposed Subpart H SIRRC's recommended measures to remedy shorted casings.

Section 195.573 External Corrosion Control: Test Stations

Proposed § 195.573 is identical to § 195.416(b), which requires maintenance of test leads to provide for monitoring the adequacy of cathodic protection.

Section 195.575 External Corrosion Control: Interference Currents

Proposed § 195.575 is comparable to § 192.473, which requires operators to minimize the detrimental effects of interference currents on gas pipelines and adjacent structures. Although at present there are no standards in part 195 concerning interference problems, we believe that most operators already have a testing program to minimize interference problems. Proposed § 195.575 has minor editorial differences from the wording of § 192.473.

Section 195.577 Internal Corrosion Control

Proposed § 195.577 is comparable to § 195.418, which requires protective measures to mitigate the effects of internal corrosion. However, proposed § 195.577(d) differs somewhat from § 195.418(d), which requires operators to investigate the extent of general corrosion found inside pipe that is removed from a pipeline. Proposed § 195.577(d) would clarify the required investigation by adopting wording similar to that of proposed § 195.565, which concerns the extent of external corrosion on exposed pipe. Also, under proposed § 195.577(d), an investigation would be required if the removed pipe is corroded to the extent that it must be remedied under proposed § 195.583, rather than if the pipe is generally corroded such that the wall thickness is less than that required by the pipe's specification tolerances, as § 195.418(d) now requires. This change would allow operators to take full advantage of criteria for determining the strength of corroded pipe (see proposed § 195.585). The change would also require consideration of the effect of corrosion pitting as well as general corrosion, consistent with the parallel requirement for gas pipelines in § 192.475(b).

Another difference between the proposed and existing standards is that proposed § 195.577(d) drops the remedial measures § 195.418(d) prescribes for corroded pipe. Remedial measures for corroded pipe would be governed by proposed § 195.583. This change would improve the present rule by basing the need for remediation on the strength of corroded pipe and by allowing the use of qualified repair

[6] The term ''bare pipe'' refers to pipe that is bare and to pipe that is ineffectively coated (see § 195.414(a)).

[7] Bare pipe and piping in breakout tank areas and pump stations are treated separately under § 194.414. So we do not consider unprotected piping in breakout tank areas and pump stations to come under the requirements of § § 194.416(d) concerning the periodic inspection of bare pipe.

methods that are not allowed under § 195.418(d).

Section 195.579 Atmospheric Corrosion Control; General

Proposed § 195.579 is comparable to § 195.416(i), which requires that all pipelines exposed to the atmosphere must be protected against atmospheric corrosion by a suitable coating. The comments indicate § 195.416(i) may be overly burdensome, because it does not give operators leeway to avoid coating pipelines that have only a harmless light surface oxide or other mild form of corrosion that is unlikely to harm the pipeline before the next scheduled inspection. So proposed § 195.579 includes an exception for these circumstances. The test, investigation, or experience used to justify an exception must be appropriate to the environment of the particular pipeline facility. In addition, this exception would not apply to splash zones of offshore pipelines or to soil-to-air interfaces of onshore pipelines.

We did not adopt SIRRC's recommendation regarding comparable § 192.479 (see above) to except all but ''active corrosion'' from the atmospheric corrosion protection requirement. The intent of the recommendation is to distinguish harmless rust from serious metal loss, but we believe this objective is better accomplished by more descriptive wording.

Section 195.581 Atmospheric Corrosion Control; Monitoring

Proposed § 195.581 is comparable to § 192.481, which requires operators of gas pipelines to reevaluate the adequacy of atmospheric corrosion protection at least every 3 years on onshore pipelines and at least every year on offshore pipelines. Although § 195.416(i) requires maintenance of protection on hazardous liquid and carbon dioxide pipelines, this standard may be too general because it lacks minimum inspection frequencies.

In deciding what inspection frequency is most appropriate for onshore pipelines, we considered the majority of comments on § 192.481 that favored lengthening the minimum inspection frequency from every 3 years to every 5 years. But we gave section 463.3 of the ASME B31.4 Code greater weight. This voluntary code, which is widely followed by operators of pipelines subject to Part 195, specifies a minimum 3-year inspection frequency for atmospheric corrosion protection onshore. We also considered that GPTC, in its recommendation regarding § 192.481, did not suggest extending the minimum 3-year frequency more than a marginal amount to provide flexibility. Also, two commenters said the present 3-year frequency is not too burdensome. There were no comments on the frequency of inspection offshore, and the ASME B31.4 Code does not specify a minimum frequency.

Proposed § 195.581 would require periodic ''inspection'' rather than ''reevaluation'' to avoid the possibility that decisions about the adequacy of protection might not be based on current observations. The proposed rule also recognizes the importance of paying special attention during inspections to particular pipeline areas that have historically been sources of corrosion problems, such as splash zones and pipe surfaces underneath thermal insulation. We feel that most operators already inspect aboveground pipelines for corrosion at the proposed frequencies and give careful attention to potential problem areas.

Section 195.583 Remedial Measures; General

Proposed § 195.583(a) is comparable to § 195.416 (f), which regulates the repair of pipe that has general corrosion.[8] But proposed § 195.583(a) reflects the wording of § 192.485(a), a repair rule similar to § 195.416(f) that bases the need for corrective action on whether the remaining wall thickness supports the maximum allowable operating pressure. At present, § 195.416 (f) bases the need for corrective action on whether the remaining wall thickness is within the pipe specification tolerances. The revised wording would allow operators to take full advantage of criteria for determining the strength of corroded pipe (see proposed § 195.585). Proposed § 195.583(b) is identical to § 195.416(g), which regulates remedial measures for localized corrosion pitting.

Section 195.585 Remedial Measures; Remaining Strength

Proposed § 195.585 is substantially the same as § 195.416(h), which authorizes the use of widely accepted criteria for determining the remaining strength of corroded pipe.

Section 195.587 Records

For hazardous liquid and carbon dioxide pipelines, requirements to keep records related to corrosion control are in § 195.404. Under § 195.404(a), operators must maintain current maps and records that identify and show the location of facilities that are cathodically protected. In addition, § 195.404(c)(3) requires operators to keep records of required inspections and tests for at least 2 years or until the next inspection or test, whichever is longer.

We are proposing to adopt new recordkeeping requirements for hazardous liquid and carbon dioxide pipelines comparable to those for gas pipelines in § 192.491. Under proposed § 195.587(a), operators would have to keep current records or maps of the location of cathodically protected piping (as they must now under § 195.404(a)), of cathodic protection facilities, and of bonded structures. Also, under proposed § 195.587(b), operators would have to keep a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by proposed Subpart H in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures does not exist. Records required by § 195.587(b) would have to be retained for at least 5 years, except that records related to determining the adequacy of, or need for, external or internal corrosion control (records related to proposed §§ 195.565, 195.569(a) and (c), and 195.577(c) and (d)) would have to be kept as long as the pipeline is in service.

The majority of comments on the appropriate period to keep records related to determining if external or internal corrosion control is adequate or needed did not support keeping these records for as long as the pipeline remains in service. Instead they mostly suggested a retention period of 5 years or the next one or two monitoring cycles, whichever is longer. But we agree with the single commenter who said keeping such records for the service life of the pipeline provides a very helpful general history. In our experience, a history of corrosion control monitoring is very useful in assessing the condition of a pipeline. If corrosion problems emerge on a pipeline, its monitoring history is considered in deciding the extent and kind of remedial action needed.

As for other records under proposed § 195.587(b) (*e.g.*, records of rectifier inspections under proposed § 195.569(b)), we believe the retention period must be compatible with the normal cycle of routine compliance investigations by government inspection personnel and long enough to provide meaningful history for investigation of an accident or safety problem. A minimum 5-year retention requirement would assure that the records are available during routine inspection

[8] Section 195.416(f) was revised by Amendment 195–68 (64 FR 69660; Decemeber 14, 1999).

visits, and provide a more complete history for analyzing problems.

Proposed § 195.587(a)(2), which is based on § 192.491(a), would require operators to have current records or maps identifying the location of cathodic protection facilities, galvanic anodes, and structures bonded to cathodic protection systems. Such records are not now required by Part 195, and although operators may have them, to minimize the recordkeeping burden, the records would only be required for installations made after the final rule goes into effect.

The record retention times proposed by § 195.587(b) would only apply to records of actions that occur after Subpart H takes effect. The retention times now required by § 195.404(c)(3) would continue to apply to records of corrosion tests and inspections done before Subpart H takes effect.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Policies and Procedures

RSPA does not consider this proposed rulemaking to be a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; Oct. 4, 1993). Therefore, the Office of Management and Budget (OMB) has not received a copy of this rulemaking to review. RSPA also does not consider this proposed rulemaking to be significant under DOT regulatory policies and procedures (44 FR 11034: February 26, 1979).

We prepared a Draft Regulatory Evaluation of the proposed rules and a copy is in the docket. The evaluation states that the proposed rules are, on the whole, comparable either to existing safety standards currently in part 195 for hazardous liquid pipelines or to existing safety standards in part 192 for gas pipelines. The evaluation also states that the information presented at public meetings and meetings with industry and state representatives strongly suggests that imposing gas pipeline safety standards for corrosion control on hazardous liquid pipelines would not require a significant departure from customary safety practices on liquid pipelines.

An important feature of the proposed rules not found in part 192 or part 195 is the reference to cathodic protection criteria in NACE Standard RP0169–96. The evaluation states that these criteria are well known and widely followed throughout the industry, as indicated by meetings with industry representatives and by the voluntary standards in the ASME B31.4 Code. The evaluation further states that operators who do not now apply the NACE criteria are likely to apply the criteria in appendix D of part 192. The proposed rules would allow use of appendix D criteria under conditions stated in the NACE standard.

The evaluation concludes there should be only minimal additional cost, if any, for operators to comply with the proposed rules. If you disagree with this conclusion, please provide information to the public docket described above.

Regulatory Flexibility Act

The proposed rules are consistent with customary practices for corrosion control in the hazardous liquid and carbon dioxide pipeline industry. Therefore, based on the facts available about the anticipated impacts of this proposed rulemaking, I certify, pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this proposed rulemaking would not have a significant impact on a substantial number of small entities. If you have any information that this conclusion about the impact on small entities is not correct, please provide that information to the public docket described above.

Executive Order 13084

The proposed rules have been analyzed in accordance with the principles and criteria contained in Executive Order 13084, ''Consultation and Coordination with Indian Tribal Governments.'' Because the proposed rules would not significantly or uniquely affect the communities of the Indian tribal governments and would not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

Paperwork Reduction Act

Section 195.587 proposes minor additional information collection requirements. Operators would be required to record the location of certain newly installed protection facilities, and keep the records for as long as the pipeline concerned is in service. In addition, records of inspections, tests, and surveys would have to be kept for as long as the pipeline is in service or for 5 years, depending on the nature of the information recorded. The present minimum retention period for these records is 2 years or the prescribed interval of test or inspection, whichever is longer (up to 5 years in some cases).

However, we believe operators already maintain records of the location of their protection facilities for as long as the pipeline is in service to be able to find the facilities for their own purposes and to carry out existing monitoring requirements in part 195. Also, we believe the burden of retaining inspection, test, and survey records for the longer period proposed would be minimal. These records are largely computerized. Maintaining these records on a floppy disk or computer file represents very minimal costs. So, because the additional paperwork burdens of this proposed rule are likely to be minimal, we believe that submitting an analysis of the burdens to OMB under the Paperwork Reduction Act is unnecessary. If you disagree with this conclusion, please submit your comments to the public docket.

Unfunded Mandates Reform Act of 1995

This proposed rulemaking would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and would be the least burdensome alternative that achieves the objective of the rule.

National Environmental Policy Act

We have analyzed the proposed rules for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Because the proposed rules parallel present requirements or practices, we have preliminarily determined that the proposed rules would not significantly affect the quality of the human environment. An environmental assessment document is available for review in the docket. A final determination on environmental impact will be made after the end of the comment period. If you disagree with our preliminary conclusion, please submit your comments to the docket as described above.

Impact on Business Processes and Computer Systems

We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to ''Y2K'' or related computer problems. The proposed rules would not mandate business process changes or require modifications to computer systems. Because the proposed rules would not affect the ability of organizations to respond to those problems, we are not proposing to delay the effectiveness of the requirements.

Executive Order 13132

The proposed rules have been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism'').

The proposed rules do not propose any regulation that (1) has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. Nevertheless, during our review of the existing corrosion control standards, representatives of state pipeline safety agencies gave us advice both in private sessions and in the two public meetings we held. In addition, our pipeline safety advisory committees, which include representatives of state governments, were, on two occasions in 1999, briefed on the corrosion control review project.

List of Subjects in 49 CFR Part 195

Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, we propose to amend 49 CFR part 195 as follows:

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

2. Section 195.3 would be amended by adding paragraphs (b)(8) and (c)(7) to read as follows:

§ 195.3 Matter incorporated by reference.

* * * * *

(b) * * *

(8) NACE International, 1440 South Creek Drive, Houston, TX 77084.

(c) * * *

(7) NACE International (NACE):

(i) NACE Standard RP0169–96, ''Control of External Corrosion on Underground or Submerged Metallic Pipeline Systems'' (1996).

(ii) [Reserved]

3. Section 195.5(b) would be revised to read as follows:

§ 195.5 Conversion to service subject to this part.

* * * * *

(b) A pipeline which qualifies for use under this section need not comply with the corrosion control requirements of subpart H of this part until 12 months after it is placed in service, notwithstanding any earlier deadlines for compliance. The requirements of §§ 195.557, 195.559, and 195.561 apply to each pipeline which substantially meets those requirements before it is placed in service or which is a segment that is replaced, relocated, or substantially altered.

* * * * *

4. Section 195.402(c)(3) would be revised to read as follows:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

* * * * *

(c) * * *

(3) Operating, maintaining, and repairing the pipeline system in accordance with each of the requirements of this subpart and subpart H of this part.

* * * * *

§ 195.404 [Amended]

5. In § 195.404, paragraph (a)(1)(v) would be removed, and paragraphs (a)(1)(vi) through (a)(1)(viii) would be redesignated as paragraphs (a)(1)(v) through (a)(1)(vii).

§§ 195.236, 195.238, 195.242, 195.244, 195.414, 195.416, 195.418 [Removed]

6. The following sections would be removed and reserved: §§ 195.236, 195.238, 195.242, 195.244, 195.414, 195.416, and 195.418.

7. Subpart H would be added to read as follows:

Subpart H—Corrosion Control

Sec.

195.551 Scope.
195.553 Qualification of supervisors.
195.555 External corrosion control; Applicability.
195.557 External corrosion control; Protective coating.
195.559 External corrosion control; Cathodic protection system.
195.561 External corrosion control; Test leads.
195.563 External corrosion control; Additional cathodic protection requirements.
195.565 External corrosion control; Examination of a buried pipeline when exposed.
195.567 External corrosion control; Cathodic protection criteria.
195.569 External corrosion control; Monitoring.
195.571 External corrosion control; Electrical isolation.
195.573 External corrosion control; Test stations.
195.575 External corrosion control; Interference currents.
195.577 Internal corrosion control.
195.579 Atmospheric corrosion control; General.
195.581 Atmospheric corrosion control; Monitoring.
195.583 Remedial measures; General.
195.585 Remedial Measures; Remaining strength.
195.587 Records.

Subpart H—Corrosion Control

§ 195.551 Scope.

This subpart prescribes minimum requirements for protecting steel pipelines against corrosion.

§ 195.553 Qualification of supervisors.

Each operator must require and verify that its supervisors maintain a thorough knowledge of that portion of the corrosion control procedures established under § 195.402 for which they are responsible for insuring compliance.

§ 195.555 External corrosion control; Applicability.

The requirements of §§ 195.557, 195.559, and 195.561 apply only to—

(a) Pipelines constructed, relocated, replaced, or otherwise changed after the applicable date in § 195.401(c); and

(b) Converted pipelines, if required by § 195.5(b).

§ 195.557 External corrosion control; Protective coating.

(a)(1) No component of a pipeline may be buried or submerged unless that component has an external protective coating that—

(i) Is designed to mitigate corrosion of the buried or submerged component;

(ii) Has sufficient adhesion to the metal surface to prevent under film migration of moisture;

(iii) Is sufficiently ductile to resist cracking;

(iv) Has enough strength to resist damage due to handling and soil stress; and

(v) Supports any supplemental cathodic protection.

(2) In addition, if any insulating-type coating is used, it must have low moisture absorption and provide high electrical resistance.

(b) All pipe coating must be inspected just prior to lowering the pipe into the ditch or submerging the pipe, and any damage discovered must be repaired.

§ 195.559 External corrosion control; Cathodic protection system.

(a) A cathodic protection system must be installed for all buried or submerged facilities to mitigate corrosion that might result in structural failure. A test procedure must be developed to determine whether adequate cathodic protection has been achieved.

(b) A cathodic protection system must be installed not later than 1 year after completing the construction.

(c) For the bottoms of aboveground breakout tanks with greater than 500 barrels (79.5 m^3) capacity built to API Specification 12F, API Standard 620, or API Standard 650 (or its predecessor

Standard 12C), the installation of a cathodic protection system under paragraph (a) of this section after October 2, 2000, must be in accordance with API Recommended Practice 651, unless the operator notes in the procedural manual (§ 195.402(c)) why compliance with all or certain provisions of API Recommended Practice 651 is not necessary for the safety of a particular breakout tank.

(d) For the internal bottom of aboveground breakout tanks built to API Specification 12F, API Standard 620, or API Standard 650 (or its predecessor Standard 12C), the installation of a tank bottom lining after October 2, 2000, must be in accordance with API Recommended Practice 652, unless the operator notes in the procedural manual (§ 195.402(c)) why compliance with all or certain provisions of API Recommended Practice 652 is not necessary for the safety of a particular breakout tank.

§ 195.561 External corrosion control; Test leads.

(a) Except for offshore pipelines, electrical test leads used for corrosion control or electrolysis testing must be installed at intervals frequent enough to obtain electrical measurements indicating the adequacy of the cathodic protection.

(b) Test leads must be installed as follows:

(1) Enough looping or slack must be provided to prevent test leads from being unduly stressed or broken during backfilling.

(2) Each lead must be attached to the pipe so as to prevent stress concentration on the pipe.

(3) Each lead installed in a conduit must be suitably insulated from the conduit.

(4) Each bared test lead wire and bared metallic area at point of connection to the pipeline must be coated with an electrical insulating material compatible with the pipe coating and the insulation on the wire.

§ 195.563 External corrosion control; Additional cathodic protection requirements.

(a) Each pipeline not subject to § 195.559 that has an effective external surface coating material must be cathodically protected. This requirement does not apply to breakout tank areas and buried pumping station piping.

(b) For the purposes of this subpart, a pipeline does not have an effective external coating and shall be considered bare if the current required to cathodically protect it is substantially the same as if it were bare.

§ 195.565 External corrosion control; Examination of a buried pipeline when exposed.

Whenever an operator has knowledge that any portion of a buried pipeline is exposed, the exposed portion must be examined for evidence of external corrosion, if the pipe is bare or if the coating is deteriorated. If external corrosion requiring remedial action under § 195.583 is found, the operator must investigate circumferentially and longitudinally beyond the exposed portion (by visual examination, indirect method, or both) to determine whether additional corrosion requiring remedial action exists in the vicinity of the exposed portion.

§ 195.567 External corrosion control; Cathodic protection criteria.

Cathodic protection required by this subpart must comply with one or more of the applicable criteria and other considerations for cathodic protection contained in section 6 of NACE Standard RP0169–96.

§ 195.569 External corrosion control; Monitoring.

(a) Each operator must, at intervals not exceeding 15 months, but at least once each calendar year, conduct tests on each buried, in contact with the ground, or submerged pipeline facility in its pipeline system that is under cathodic protection to determine whether the protection is adequate under § 195.567.

(b) Each operator must, at intervals not exceeding 2½ months, but at least six times each calendar year, inspect each of its cathodic protection rectifiers.

(c) Each operator must, at intervals not exceeding 5 years, reevaluate its unprotected pipelines and cathodically protect them in accordance with this subpart in areas in which active corrosion is found. The operator must determine the areas of active corrosion by electrical survey, or where an electrical survey is impractical, by other means that include review and analysis of leak repair and inspection records, corrosion monitoring records, exposed pipe inspection records, and the pipeline environment. In this section:

(1) *Active corrosion* means continuing corrosion which, unless controlled, could result in a condition that is detrimental to public safety or the environment.

(2) *Electrical survey* means a series of closely spaced pipe-to-soil readings over a pipeline that are subsequently analyzed to identify locations where a corrosive current is leaving the pipeline.

(3) *Pipeline environment* includes soil resistivity (high or low), soil moisture (wet or dry), soil contaminants that may promote corrosive activity, and other known conditions that could affect the probability of active corrosion.

(d) Each reverse current switch, each diode, and each interference bond whose failure would jeopardize structural protection must be electrically checked for proper performance six times each calendar year, but with intervals not exceeding 2½ months. Each other interference bond must be checked at least once each calendar year, but with intervals not exceeding 15 months.

(e) For aboveground breakout tanks where corrosion of the tank bottom is controlled by a cathodic protection system, the cathodic protection system must be inspected to ensure it is operated and maintained in accordance with API Recommended Practice 651, unless the operator notes in the procedure manual (§ 195.402(c)) why compliance with all or certain provisions of API Recommended Practice 651 is not necessary for the safety of a particular breakout tank.

§ 195.571 External corrosion control; Electrical isolation.

(a) Each buried or submerged pipeline must be electrically isolated from other metallic structures, unless the pipeline and the other structures are electrically interconnected and cathodically protected as a single unit.

(b) One or more insulating devices must be installed where electrical isolation of a portion of a pipeline is necessary to facilitate the application of corrosion control.

(c) Inspection and electrical tests must be made to assure that electrical isolation is adequate.

(d) An insulating device may not be installed in an area where a combustible atmosphere is anticipated unless precautions are taken to prevent arcing.

(e) Where a pipeline is located in close proximity to electrical transmission tower footings, ground cables or counterpoise, or in other areas where fault currents or unusual risk of lightning may be anticipated, it must be provided with protection against damage due to fault currents or lightning, and protective measures must also be taken at insulating devices.

§ 195.573 External corrosion control; Test stations.

Each operator must maintain the test leads required for cathodic protection in such a condition that electrical measurements can be obtained to ensure adequate protection.

§ 195.575 External corrosion control; Interference currents.

(a) Each operator whose pipeline system is subjected to stray currents must have a program to identify, test for, and minimize the detrimental effects of such currents.

(b) Each impressed current or galvanic anode system must be designed and installed to minimize any adverse effects on existing adjacent metallic structures.

§ 195.577 Internal corrosion control.

(a) No operator may transport any hazardous liquid or carbon dioxide that would corrode the pipe or other components of its pipeline system, unless it has investigated the corrosive effect of the hazardous liquid or carbon dioxide on the system and has taken adequate steps to mitigate corrosion.

(b) If corrosion inhibitors are used to mitigate internal corrosion the operator must use inhibitors in sufficient quantity to protect the entire part of the system that the inhibitors are designed to protect and shall also use coupons or other monitoring equipment to determine their effectiveness.

(c) The operator must, at intervals not exceeding 7½ months, but at least twice each calendar year, examine coupons or other types of monitoring equipment to determine the effectiveness of the inhibitors or the extent of any corrosion.

(d) Whenever pipe is removed from a pipeline, the operator must inspect the internal surface of the pipe for evidence of corrosion. If internal corrosion requiring remedial action under § 195.583 is found, the operator shall investigate circumferentially and longitudinally beyond the removed pipe (by visual examination, indirect method, or both) to determine whether additional corrosion requiring remedial action exists in the vicinity of the removed pipe.

§ 195.579 Atmospheric corrosion control; General.

Each pipeline or portion of pipeline that is exposed to the atmosphere must be cleaned and coated with a material suitable for the prevention of atmospheric corrosion. However, except for portions of pipelines in offshore splash zones and soil-to-air interfaces, protection against atmospheric corrosion is not required if the operator demonstrates by test, investigation, or experience that corrosion will be limited to a light surface oxide or else will not affect the safe operation of the pipeline before the next scheduled inspection.

§ 195.581 Atmospheric corrosion control; Monitoring.

(a) Each operator must, at intervals not exceeding 3 years for onshore pipelines or 15 months, but at least once each calendar year, for offshore pipelines, inspect each pipeline or portion of pipeline that is exposed to the atmosphere for evidence of atmospheric corrosion. Particular attention must be given to pipe at soil-to-air interfaces, under thermal insulation, under disbonded coatings, at pipe supports, in splash zones, at deck penetrations, and in spans over water.

(b) If atmospheric corrosion is found, the operator must provide protection against atmospheric corrosion as required by § 195.579.

§ 195.583 Remedial measures; General.

(a) Any pipe that is found to be generally corroded so that the remaining wall thickness is less than that required for the maximum operating pressure of the pipeline must be replaced. However, generally corroded pipe need not be replaced if—

(1) The operating pressure is reduced to be commensurate with the strength of the pipe, based on the actual remaining wall thickness; or

(2) The pipe is repaired by a method that reliable engineering tests and analyses show can permanently restore the serviceability of the pipe.

(b) If localized corrosion pitting is found to exist to a degree where leakage might result, the pipe must be replaced or repaired, or the operating pressure must be reduced commensurate with the strength of the pipe based on the actual remaining wall thickness in the pits.

§ 195.585 Remedial Measures; Remaining strength.

Under § 195.583, the strength of the pipe based on actual remaining wall thickness may be determined by the procedure in ASME B31G Manual for Determining the Remaining Strength of Corroded Pipelines or by the procedure developed by AGA/Battelle—A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe (with RSTRENG disk). Application of the procedure in the ASME B31G manual or the AGA/Battelle Modified Criterion is applicable to corroded regions (not penetrating the pipe wall) in existing steel pipelines in accordance with limitations set out in the respective procedures.

§ 195.587 Records.

(a) Each operator must maintain current records or maps to show the location of—

(1) Cathodically protected pipelines;

(2) Cathodic protection facilities and galvanic anodes installed after [effective date of final rule]; and

(3) Neighboring structures bonded to cathodic protection systems. Records or maps showing a stated number of anodes, installed in a stated manner or spacing, need not show specific distances to each buried anode.

(b) Each operator must maintain a record of each analysis, check, demonstration, examination, inspection, investigation, review, survey, and test required by this subpart in sufficient detail to demonstrate the adequacy of corrosion control measures or that corrosion requiring control measures does not exist. These records must be retained for at least 5 years, except that records related to §§ 195.565, 195.569(a) and (c), and 195.577(c) and (d) must be retained for as long as the pipeline remains in service.

Issued in Washington, DC on December 1, 2000.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 00–31224 Filed 12–7–00; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 65, No. 237

Friday, December 8, 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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Availability of Environmental Assessment and Finding of No Significant Impact

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of Availability of Environmental Assessment and Finding of No Significant Impact.

Authority: 42 U.S.C. 4321 *et seq.;* 36 CFR part 805.

SUMMARY: An environmental assessment on the Council's proposed revisions of its regulations implementing Section 106 of the National Historic Preservation Act was prepared in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* and the Advisory Council on Historic Preservation's NEPA regulations, 36 CFR Part 805. The environmental assessment made a preliminary determination that promulgation of the revised regulations would not have a significant impact on the quality of the human environment and that preparation of an environmental impact statement would not be necessary. Notice of the availability of the environmental assessment and preliminary determination of no significant impact, and of a 30-day public comment period was published in the **Federal Register** on July 11, 2000 (65 FR 42850). The Council has considered the comments received and has found that the proposed action will have no significant impact on the human environment. Copies of the environmental assessment and finding of no significant impact may be obtained by contacting the person listed below.

FOR FURTHER INFORMATION CONTACT: Javier Marques, Assistant General Counsel, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004. (202) 606–8503.

Dated: December 4, 2000.

John M. Fowler,

Executive Director.

[FR Doc. 00–31254 Filed 12–7–00; 8:45 am]

BILLING CODE 4310–10–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

AGENCY: U.S. Agency for International Development (USAID).

ACTION: Notice of U.S. Agency for International Development Financial Assistance Subject to Title IX of the Education Amendments of 1972, as amended.

SUMMARY: In accordance with Subpart F of the final common rule for the enforcement of Title IX of the Education Amendments of 1972, as amended (''Title IX''), this notice lists federal financial assistance administered by USAID that is covered by Title IX. Title IX prohibits recipients of federal financial assistance from discriminating on the basis of sex in education programs or activities. Subpart F of the Title IX common rule requires each federal agency that awards federal financial assistance to publish in the **Federal Register** a notice of the federal financial assistance covered by the Title IX regulations within sixty (60) days after the effective date of the final common rule. The final common rule for the enforcement of Title IX was published in the **Federal Register** by twenty-one (21) federal agencies, including USAID, on August 30, 2000, 65 FR 52857–52895). USAID's portion of the final common rule will be codified at 22 CFR part 229.

SUPPLEMENTARY INFORMATION: Title IX prohibits recipients of federal financial assistance from discriminating on the basis of sex in educational programs or activities. Specifically, the statute states that ''[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance,'' with specific exceptions for various entities, programs, and activities. 20 U.S.C. 1681(a). Title IX and the Title IX common rule prohibit discrimination on the basis of sex in the operation of, and the provision or denial of benefits by, education programs or activities conducted not only by educational institutions but by other entities as well.

List of Federal Financial Assistance Administered by the U.S. Agency for International Development to Which Title IX Applies

Note: All domestic recipients of federal financial assistance from USAID are subject to Title IX, but Title IX's anti-discrimination prohibitions are limited to the educational components of the recipient's program or activity, if any.

Failure to list a type of federal assistance below shall not mean, if Title IX is otherwise applicable, that a program or activity is not covered by Title IX.

The following types of federal financial assistance were derived from Appendix A of USAID's regulations effectuating Title VI of the Civil Rights Act of 1964, 22 U.S.C. Part 209, and section 504 of the Rehabilitation Act of 1973, 22 U.S.C. Part 217.

1. Assistance provided to organizations and institutions to carry on programs of technical cooperation and development in the United States to promote the economic development of less developed friendly countries.
2. Assistance provided to organizations and institutions to carry on programs of technical cooperation and development in the United States to promote the economic development of the less developed friendly countries of Latin America.
3. Assistance provided to organizations and institutions to carry out programs in the United States of research into, and evaluation of, economic development in less developed foreign countries.
4. Assistance provided to research and educational institutions in the United States to strengthen their capacity to develop and carry out programs or activities concerned with the economic and social development of developing countries.
5. Assistance provided to land grant and other qualified agricultural universities and colleges in the United States to develop their capabilities to assist developing countries in agricultural teaching, research and extension services.

6. Assistance provided to private and voluntary agencies, non-profit organizations, educational institutions and other qualifieid organizations for programs or activities in the United States to promote the economic and social development of developing countries.

7. Assistance provided to private and voluntary agencies, non-profit organizations, educational institutions and other qualified organizations for programs or activities in the United States to promote the use of lessons learned from USAID economic and social development programs in developing countries.

Dated: November 28, 2000.

Jessalyn L. Pendarvis,

Director, Office of Equal Opportunity Programs, USAID.

[FR Doc. 00–31257 Filed 12–7–00; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Oregon

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of availability of proposed changes in section IV of the FOTG of the NRCS in Oregon for review and comment.

SUMMARY: It is the intention of NRCS in Oregon to issue revisions to Conservation Practice Standards 327, Conservation Cover, and 328, Conservation Crop Rotation, in section IV of the State Technical Guide in Oregon. These practices may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received until on or before January 8, 2001. Once the review and comment period is over and the standards are finalized, they will be placed in the individual Field Office Technical Guide in each field office.

ADDRESSES: Address all requests and comments to Roy M. Carlson, Jr., Leader for Technology, Natural Resources Conservation Service (NRCS), 101 SW Main Street, Suite 1300, Portland, Oregon 97204. Copies of these standards will be made available upon written request. You may submit electronic requests and comments to *roy.carlson@or.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Roy M. Carlson, Jr., 503–414–3231.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Oregon will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Oregon regarding disposition of those comments and a final determination of changes will be made. In Oregon, ''technical guides'' refers to the Field Office Technical Guide maintained at each NRCS Field Office in Oregon.

Dated: December 4, 2000.

Roy M. Carlson, Jr.,

Acting State Conservationist, Portland, Oregon.

[FR Doc. 00–31338 Filed 12–7–00; 8:45 am]

BILLING CODE 3410–16–U

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of the Release of the Comprehensive Nutrient Management Planning Technical Guidance

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Release of final Comprehensive Nutrient Management Planning Technical Guidance.

SUMMARY: The U.S. Department of Agriculture's (USDA) Natural Resources Conservation Service (NRCS) released the draft *Technical Guidance For Developing Comprehensive Nutrient Management Plans (CNMPs)* for public review and comment in December 1999. Based on the comments received, the document has been revised and is now being released in final form as the *Comprehensive Nutrient Management Planning Technical Guidance.* This guidance document is intended for use by Natural Resources Conservation Service (NRCS) and conservation partner State and local field staffs, private consultants, landowners/operators, and others that either will be developing or assisting in the development of Comprehensive Nutrient Management Plans (CNMPs).

Availability: The Comprehensive Nutrient Management Planning Technical Guidance is available on the NRCS'' website at: *http://www.nhq.nrcs.usda.gov/PROGRAMS/ahcwpd/ahCNMP.html.* A paper copy of the CNMP Technical Guidance can be obtained by submitting a request in writing to: Director, Animal Husbandry and Clean Water Programs Division, 5601 Sunnyside Avenue, Mail Stop 5473, Beltsville, Maryland, 20705; or by calling (301) 504–2196.

DATES: This document becomes effective on December 1, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas W. Christensen, Natural Resources Conservation Service, (301) 504–2196; fax (301) 504–2264, e-mail *thomas.christensen@usda.gov.*

SUPPLEMENTARY INFORMATION: The *Comprehensive Nutrient Management Planning Technical Guidance* is a document intended for use by those individuals (both public and private) who will be developing or assisting in the development of CNMPs. The purpose of this document is to provide technical guidance for the development of CNMPs, whether they are developed through USDA's voluntary programs or as a means to help satisfy the United States Environmental Protection Agency's (USEPA) National Pollutant Discharge Elimination System (NPDES) permit requirements.

The technical guidance is not intended as a sole source reference for developing CNMPs. Rather, it is to be used as a tool in support of the USDA, NRCS conservation planning process, as contained in the NRCS National Planning Procedures Handbook (NPPH) and various other agency technical references, handbooks, and policy directives. This technical guidance provides specific criteria that needs to be addressed in developing and implementing a CNMP. USDA prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital or family status also is prohibited by statutes enforced by USDA. (All prohibited bases do not apply to all programs). Persons with disabilities who require alternative means for communication of program information (braille, large print, audio tape, etc.) should contact the USDA's Target Center at (202) 720–2600 (voice and TDD).

To file a complaint of discrimination to USDA, write USDA Director, Office of Civil Rights, Room 326–W, Whitten Building, 14th and Independence Avenue, SW., Washington, DC 20250–

9410, or call (202) 720–5964 (voice and TDD). USDA is an equal opportunity provider and employer.

Signed in Washington, D.C., on December 1, 2000

Danny D. Sells,

Associate Chief, Natural Resources Conservation Service.

[FR Doc. 00–31264 Filed 12–7–00; 8:45 am]

BILLING CODE 3410–16–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: January 8, 2001.

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 February 4, April 14, July 28, October 13 and October 20, 2000 the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 5492, 20135, 46425, 60903, 63057) of proposed additions to the Procurement List.

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Line, Multi-Loop
1670–01–062–6304
Line, Multi-Loop
1670–01–062–6305

Services

Administrative Services

NASA Goddard Space Flight Center, Greenbelt, Maryland

Distribution/Logistics Service

Defense Supply Center—Philadelphia, Philadelphia
Pennsylvania North Central Region
Lansing, Michigan

Laundry Service

Anniston Army Depot, Anniston, Alabama

Management Services

Department of Housing & Urban Development, 909 1st Avenue, Suite 200, Seattle, Washington

Recycling Service

Naval Weapons Station, NAWS Recycling Center, China Lake, California

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. 00–31320 Filed 12–7–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments must be received on or before: January 8, 2001.

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.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and 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 commodity and services to the Government.

2. The action will result in authorizing small entities to furnish the commodity and 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 commodity and 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 commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Holder, Label w/Slit
9905–01–365–2125
50% of the Government Requirement
NPA: Occupational Development Center, Inc., Thief River Falls, Minnesota

Services

Food Service, EOD Dining Facility, Eglin Air Fore Base, Florida
NPA: Lakeview Center, Inc., Pensacola, Florida
Janitorial/Custodial, I.C. Hewgley Jr., USARC, Knoxville, Tennessee
NPA: Goodwill Industries—Knoxville, Inc., Knoxville, Tennessee
Order Processing Service, National Institute of Health, Bethesda, Maryland
NPA: Blind Industries & Services of Maryland, Baltimore, Maryland

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–31321 Filed 12–7–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Proposed Additions; Procurement List; Correction

In the document appearing on page 70549, FR Doc 00–30001, in the issue of November 24, 2000, in the first column the Committee published a proposed addition for Sorbents, Chemical and Oil. The NSN 4235–01–457–0676 was incorrect. The correct NSN is 4235–01–457–0678.

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–31322 Filed 12–7–00; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–825]

Stainless Steel Sheet and Strip in Coils From Italy; Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of countervailing duty administrative review.

SUMMARY: In response to an August 31, 2000, request made by Acciai Speciali Terni S.p.A, a producer/exporter of stainless steel sheet and strip in coils from Italy, and Acciai Speciali Terni USA, Inc., a U.S. importer of subject merchandise, on October 2, 2000 (65 FR 58733), the Department of Commerce published the initiation of an administrative review of the countervailing duty order on stainless steel sheet and strip in coils from Italy, covering the period November 17, 1998, through December 31, 1999. This review has now been rescinded as a result of the timely withdrawal of the request for review by Acciai Speciali Terni S.p.A and Acciai Speciali Terni USA, Inc.

EFFECTIVE DATE: December 8, 2000.

FOR FURTHER INFORMATION CONTACT: Greg Campbell or Suresh Maniam, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2239 and (202) 482–0176, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (Department) regulations refer to 19 CFR part 351 (1999).

Background

On August 6, 1999, the Department published a countervailing duty order on stainless steel sheet and strip in coils from Italy (64 FR 42923). On August 31, 2000, Acciai Speciali Terni S.p.A. (AST), a producer/exporter of stainless steel sheet and strip in coils from Italy, and Acciai Speciali Terni USA, Inc. (AST USA), a U.S. importer of subject merchandise, requested an administrative review of the countervailing duty order on stainless steel sheet and strip in coils from Italy of the relevant period. In accordance with 19 CFR 351.221(c)(1)(i), we published the initiation of the review on October 2, 2000 (65 FR 58733). On November 21, 2000, AST and AST USA withdrew their request for review.

Rescission of Review

The Department's regulations, at 19 CFR 351.213(d)(1), provide that the Department will rescind an administrative review if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. AST withdrew its request for an administrative review on November 21, 2000, which is within the 90-day deadline. No other party requested a review of AST's sales. Therefore, the Department is rescinding this administrative review with respect to AST.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: December 4, 2000.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–31352 Filed 12–07–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000913258-0258-01; I.D. No 091100C]

RIN: 0648-ZA93

Announcement of Funding Opportunity for Research Project Grants

AGENCY: Center for Sponsored Coastal Ocean Research/Coastal Ocean Program (CSCOR/COP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Solicitation of proposals for undergraduate, graduate, and recently graduated students concerning career development in coastal ocean science, management, and policy.

SUMMARY: The purpose of this document is to advise the public that CSCOR/COP is soliciting 1-year and 2-year proposals for career development programs commencing in late Fiscal Year (FY 2001) with an anticipated start date of July 1, 2001. The purpose of these awards will be to support activities designed to facilitate and/or enhance the development of qualified professionals in the fields of coastal ocean science, management, and policy. The coastal ocean is inclusive of the near shore ocean, estuaries, and the Great Lakes.

This notice solicits applications for proposals from eligible non-Federal applicants. Proposals selected for funding from non-Federal researchers will be funded through a project grant. Proposals from academic institutions,

particularly those that are Minority Serving Institutions (MSIs), collaborate with MSIs, or serve minority students, are strongly encouraged.

DATES: The deadline for receipt of proposals at the COP office is 3 p.m., EST, January 23, 2001. Note that late-arriving applications that were provided to a delivery service on or before January 22, 2001, with delivery guaranteed before 3 p.m., EST, on January 23, 2001, will be accepted for review if the applicant can document that the application was provided to the delivery service with delivery to the address listed below guaranteed prior to the specified closing date and time. Subject to the availability of funds and facilities, it is anticipated that final decisions on awards will be made by early March, 2001.

ADDRESSES: Submit the original and 10 copies of your proposal to the Coastal Ocean Program Office (Career 2001), SSMC ι3, 9th Floor, Station 9700, 1315 East-West Highway, Silver Spring, MD 20910. NOAA and COP Standard Form Applications with instructions are accessible on the COP Internet site (http://www.cop.noaa.gov) under the COP Grants Support Section, Part D, Application Forms for Initial Proposal Submission. Forms may be viewed, and in most cases, filled in by computer. All forms must be printed, completed, and mailed to CSCOR/COP with original signatures. Blue ink for original signatures is recommended but not required. If you are unable to access this information, you may call CSCOR/COP at 301-713-3338 to leave a mailing request.

FOR FURTHER INFORMATION CONTACT: *Technical Information*: Susan Banahan, Career 2001 Program Manager, COP Office, 301-713-3338/ext 115, Internet: Susan.Banahan@noaa.gov;

Business Management Information: Leslie McDonald, COP Grants Administrator, 301-713-3338/ext 137, Internet: Leslie.McDonald@noaa.gov.

Further information on this program may be viewed at the COP internet site.

SUPPLEMENTARY INFORMATION:

Background

Program Description

For complete Program Description and Other Requirements for the COP, see the General Grant Administration Terms and Conditions of the Coastal Ocean Program published in the **Federal Register** (65 FR 62706, October 19, 2000) and at the COP home page.

CSCOR/COP supports research programs designed to address critical management issues in the Nation's estuaries, coastal waters, and the Great Lakes. Its primary objective is to provide decision makers with high quality scientific information appropriate to promoting near-term improvements in coastal ecosystem management.

In support of that objective, CSCOR/COP recognizes the need to foster the development of qualified professionals in the fields of coastal ocean science, management, and policy. It is the intent of CSCOR/COP to augment NOAA's existing programs in research and education and to increase the participation of minorities and under-represented students in coastal ocean sciences and resource management. The COP is soliciting proposals describing a coherent program designed to develop techniques and skills in professional networking, job hunting, proposal writing, and in preparation of presentations, and publishing for recent graduates, graduate or undergraduate students, including minorities or under-represented students considering careers in coastal ocean science, resource management and policy.

Examples of such activities could include, but are not limited to establishing an invited speaker series; mini-courses, workshops, or special sessions at national meetings (e.g., sessions on career options in research, management agencies, consulting, environmental education, non-governmental organizations, and so forth.); funding to support student attendance, including minority and under-represented students, at appropriate national meetings or workshops; establishing networking or instructional websites; and establishing mentoring programs and/or internships with research institutes, management offices, non-governmental agencies, etc. This announcement is not soliciting proposals for research projects.

Proposals should provide detailed descriptions and time line for proposed activities, including any reports to be generated. Where appropriate, letters indicating collaboration with other entities or investigators not named in the proposal should be included. Proposals should also include the means to evaluate and measure project effectiveness.

Part I: Schedule and Proposal Submission

This notice requests full proposals only. The provisions for proposal preparation provided here are mandatory. Proposals received after the published deadline or proposals that deviate from the prescribed format will be returned to the sender without further consideration. Information regarding this announcement, additional background information, and required Federal forms are available on the COP home page.

Full Proposals

Applications submitted in response to this announcement require an original proposal and 10 proposal copies at time of submission. This includes color or high-resolution graphics, unusually sized materials (i.e., not 8.5 x 11 inches or 21.6 cm x 28 cm), or otherwise unusual materials submitted as part of the proposal. For color graphics, submit either color originals or color copies. The stated requirements for 10 proposal copies provide for a timely review process. Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

Required Elements

All recipients must closely follow the following seven elements in the preparation of proposals. Part II: Further Supplementary Information of this Document provides additional, necessary information.

(1) *Signed summary title page*: The title page should be signed by the Principal Investigator (PI) and the institutional representative. The summary title page identifies the project's title starting with ''Career 2001,'' a short title (less than 50 characters), and the lead PI's name and affiliation, complete address, phone, FAX, and E-mail information. The requested budget for each fiscal year should be included on the summary title page. Multi-institution proposals must include signed summary title pages from each institution.

(2) *One-page abstract/project summary*: The Project Summary (Abstract) Form, which is to be submitted at time of application, shall include an introduction describing the program/department and institution in which the career development activities will be conducted, the career development activity(s) to be completed, and the expected outcome(s). The prescribed COP format for the Project Summary Form can be found on the COP Internet site under the COP Grants Support section, Part D.

The summary should appear on a separate page, headed with the proposal title, institution(s), investigator(s), total proposed cost, and budget period. It should be written in the third person. The summary helps compare proposals quickly and allows the respondents to summarize these key points in their own words.

(3) *Statement of work/project description*: The project description

section must not exceed eight pages. Page limits are inclusive of figures and other visual materials, but exclusive of references and milestone chart. The proposed 1- or 2-year project must be completely described, including a brief description of the academic program. The description of career development objectives, proposed activities, participants, and means of measuring effectiveness, and a brief synopsis of relevant results from any similar career development programs supervised by the proposing investigator(s) must be included.

Project management should be clearly identified with a description of the functions of each investigator, if more than one. A full justification, not a reiteration of the justifications presented in this document, must be provided. This section should also include:

(a) The objective for the period of proposed work and its expected significance and impact.

(b) The relation to other ongoing career development activities and/or programs.

(c) A discussion of how the proposed project lends value to the stated COP objectives.

(d) Potential coordination with other investigators, programs, departments, or institutions.

(e) References cited. Reference information is required. Each reference must include the names of all authors in the same sequence in which they appear in the publications, the article title, volume number, page numbers, and year of publications. This section should include bibliographic citations only and should not be used to provide parenthetical information outside the 8-page project description.

(4) *Milestone chart*: Provide time lines of major tasks covering the duration of the proposed project, up to 24 months.

(5) *Budget and Application Forms*: Both NOAA and COP-specific application forms may be obtained at the COP Grants website. Forms may be viewed, and in most cases, filled in by computer. All forms must be printed, completed, and mailed to CSCOR/COP; original signatures in blue ink are encouraged. If applicants are unable to access this information they may call the CSCOR/COP grants administrator listed in the section **FOR FURTHER INFORMATION CONTACT**.

At time of proposal submission, all applicants shall submit the Standard Form, SF-424 (Rev 7-97) Application for Federal Assistance, to indicate the total amount of funding proposed for the whole project period. Applicants will also submit a COP Summary Proposal Budget Form for each fiscal year increment. Multi-institution proposals must include a Summary Proposal Budget Form from each institution.

Use of this budget form will provide for a detailed annual budget and for the level of detail required by the COP program staff to evaluate the effort to be invested by investigators and staff on a specific project. The COP budget form is compatible with forms in use by other agencies that participate in joint projects with COP and can be found on the COP home page under COP Grants Support, Part D, or may be requested from the COP Grants Administrator.

All applicants shall include a budget narrative and a justification that support all proposed budget categories. The program office will review the proposed budgets to determine the necessity and adequacy of proposed costs for accomplishing the objectives of the proposed grant.

Applicants who are subsequently recommended for award will be instructed to furnish the other required standard NOAA forms provided on the COP home page.

(6) *Biographical sketch*: With each proposal, there should be an abbreviated curriculum vitae, two pages per investigator, and a list of all persons (including their organizational affiliation), in alphabetical order, who have collaborated on a project, book, article, or paper within the last 48 months. If there are no collaborators, this should be so indicated. Students, post-doctoral associates, and graduate and postgraduate advisors of the PI should also be disclosed. This information helps to identify potential conflicts of interest or bias in the selection of reviewers.

(7) *Proposal format and assembly*: The original proposal should be clamped in the upper left-hand corner, but left unbound. The 10 required copies can be stapled in the upper left-hand corner or bound on the left edge. The page margin must be one inch (2.5 cm) margins at the top, bottom, left and right, and the type face standard 12 points size must be clear and easily legible.

Part II: Further Supplementary Information

(1) *Program authorities*: For a list of all program authorities for the Coastal Ocean Program, see General Grant Administration Terms and Conditions of the Coastal Ocean Program published in the Federal Register (65 FR 62706, October 19, 2000) and at the COP home page. Specific authority cited for this announcement is 15 U.S.C. 1540.

(2) *Catalog of Federal Domestic Assistance Number*: 11.478 Coastal Ocean Program.

(3) *Program description*: For complete COP program descriptions, see General Grant Administration Terms and Conditions of the Coastal Ocean Program published in the **Federal Register** (65 FR 62706, October 19, 2000).

(4) *Funding availability*: Funding is contingent upon the availability of Federal appropriations for FY 2001 and FY 2002. It is anticipated that up to a total of $100,000 will be available per fiscal year in FY 2001 and FY 2002 for supporting activities proposed by submissions to this announcement.

If an application is selected for funding, DOC/NOAA has no obligation to provide any additional future funding in connection with that award beyond the specified period of performance. Renewal of an award or amendment of an award to increase funding or to extend the period of performance is based on satisfactory performance and is at the total discretion of the DOC/NOAA.

Publication of this document does not obligate the COP to any specific award or to any part of the entire amount of funds available. Recipients and subrecipients are subject to all Federal laws and agency policies, regulations, and procedures applicable to Federal financial assistance awards.

(5) *Matching requirements*: None.

(6) *Eligibility criteria*: Eligible applicants are institutions of higher education and other non-profits. All applications will be competed against each other. Proposals selected for funding from non-Federal applicants will be funded through a project grant or a cooperative agreement under the terms of this notice.

Minority Serving Institutions (MSIs) are especially encouraged to submit proposals. Other academic institutions are encouraged to collaborate with MSI(s). MSI(s) include institutions of higher education identified by the Department of Education as Historically Black Colleges and Universities, Hispanic Serving Institutions or Tribal Colleges and Universities.

DOC requirements will prevail if there is a conflict between those requirements and institutional requirements. Federal employees may not apply for funding, however Federal employees may be included in projects as unfunded collaborators.

(7) *Award period*: Full Proposals should cover a project period of 1 or 2 years, with a start date of July 1, 2001. Multi-year project period funding may be funded incrementally on an annual

basis; but, once awarded, multi-year projects will not compete for funding in the subsequent year. Each award shall require a Statement of Work which represents substantial accomplishments that can be easily separated into annual increments if prospective funding is not made available, or is discontinued.

(8) *Indirect costs*: If indirect costs are proposed, the following statement applies: The total dollar amount of the indirect costs proposed in an application must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award.

(9) *Project funding priorities*: For description of project funding priorities, see General Grant Administration Terms and Conditions of the COP published in the Federal Register (65 FR 62706, October 19, 2000) and at the COP home page.

(10) *Evaluation criteria*: The following criteria and assigned evaluation weights will be used for evaluating proposals:

(a) Rationale (10 percent): How well the proposed project addresses the stated objectives;

(b) Approach (10 percent): Innovativeness of the project approach to meeting its stated objectives;

(c) Program Plan (40 percent): Program plans should explain the following: the effectiveness of the proposed activities in furthering the careers of students and/or recent graduates, including minority and under-represented students, in the coastal ocean sciences, resource management, and policy; how the proposed activities will complement existing in-house programs; what new opportunities will be developed for students and the expected outcomes; how many students are expected to participate; what type of plan is developed for determining the effectiveness of the project, especially in terms of impact on student and/or recent graduates opportunities; how proposed activities will be accomplished within the grant period; and upon completion of the project, how the activities will be incorporated into the institution's programs;

(d) Qualifications of the Project Personnel (20 percent): Qualifications and demonstrated ability of the investigators within their area of expertise; the ability of the investigators to complete the proposed project successfully; previous experience of investigator in managing or designing educational enhancement programs; and participating institute has the appropriate resources to carry out the proposed activities;

(e) Linkages (10 percent): Collaboration with other programs, departments, MSI, or other educational, research, or management institutions;

(f) Costs (10 percent): The proposed budget is reasonable and adequate to accomplish the proposed work within the specified period of performance.

(11) *Selection procedures*: For complete information on selection procedures, refer to General Grant Administration Terms and Conditions of the COP published in the **Federal Register** (65 FR 62706, October 19, 2000) and at the COP home page. All proposals received under this specific **Federal Register** notice will be evaluated and ranked individually in accordance with the assigned weights of the above evaluation criteria through independent peer review. Both Federal and non-Federal experts in the field may be used in this process.

Investigators may be asked to modify objectives, work plans or budgets, and provide supplemental information required by the DOC/NOAA prior to the award. When a decision has been made (whether an award or declination), verbatim copies of reviews and summaries of review panel deliberations, if any, will be made available to the proposer.

(12) *Other requirements*: Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.'' For a complete description of other requirements, see General Grant Administration Terms and Conditions of the COP published in the **Federal Register** (65 FR 62706, October 19, 2000) and at the COP Home Page.

(13) Pursuant to Executive Orders 12876, 12900, and 13021, DOC/NOAA is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by MSI(s) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSI to participate in, and benefit from, Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSI(s).

(14) Applicants are hereby notified that they are encouraged, to the greatest practicable extent, to purchase American-made equipment and products with funding provided under this program.

(15) This notification involves collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF-LLL has been approved by the Office of Management and Budget (OMB) under control numbers 0348-0043, 0348-0044, 0348-0040 and 0348-0046.

The following requirements have been approved by OMB under control number 0648-0384; a Summary Proposal Budget Form (30 minutes per response), a Project Summary Form (30 minutes per response), a standardized format for the Annual Performance Report (5 hours per response), a standardized format for the Final Report (10 hours per response), and the submission of up to 20 copies of proposals (10 minutes per response). The response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Leslie.McDonald@noaa.gov. Copies of these forms and formats can be found on the COP home page under Grants Support sections, Parts D and F.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection displays a currently valid OMB control number.

Dated: December 1, 2000.

John Oliver,

Director, Management and Budget Office, National Ocean Service.

[FR Doc. 00–31328 Filed 12–7–00; 8:45 am]

BILLING CODE 3510–JS–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form, and OMB Number: Air Force Officer Training School (OTS) Accession Forms; AETC Forms 1413 and 1422; OMB Number 0701–0080.

Type of Request: Extension.
Number of Respondents: 1,200.
Responses per Respondent: 1.
Annual Responses: 1,200.
Average Burden per Response: 1.25 hours.
Annual Burden Hours: 1,500.
Needs and Uses: These forms are used by Air Force field recruiters and education counselors in the processing of Officer Training School (OTS) applications. Respondents are civilian and active-duty candidates applying for a commission in the U.S. Air Force. These forms provide pertinent information to facilitate selection of candidates for a commission.
Affected Public: Individuals or Households.
Frequency: On Occasion.
Respondent's Obligation: Required to Obtain or Retain Benefits.
OMB Desk Officer: Mr. Edward C. Springer.
Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. Robert Cushing.
Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 30, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–31238 Filed 12–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).
Title, Form, and OMB Number: Air Force Academy Candidate Activities Record; USAF Form 147; OMB Number 0701–0063.
Type of Request: Reinstatement.
Number of Respondents: 7,010.
Responses per Respondent: 1.
Annual Responses: 7,010.
Average Burden per Response: 45 minutes.
Annual Burden Hours: 5,248.
Needs and Uses: The information collection requirement is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy. The information collected on this form is required by 10 U.S.C. 9346. The respondents are students applying for admission to the United States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility. If the information on the form is not collected, the individual cannot be considered for admittance to the Air Force Academy.
Affected Public: Individuals or Households.
Frequency: On Occasion.
Respondent's Obligation: Required to Obtain or Retain Benefits.
OMB Desk Officer: Mr. Edward C. Springer.
Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. Robert Cushing.
Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 30, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–31239 Filed 12–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35).
Title, Form, and OMB Number: Family Support Center Information; AF Forms 2800, 2801, and 2805; OMB Number 0701–0070.
Type of Request: Reinstatement.
Number of Respondents: 10,000.
Responses per Respondent: 3.
Annual Responses: 30,000.
Average Burden Per Response: 5 minutes (average).
Annual Burden Hours: 2,666.
Needs and Uses: The information collection requirement is necessary to obtain demographic data about individuals and family members who utilize the services of the Family Support Center. It is also a mechanism for tracking the services provided in order to determine program usage and trends as well as program evaluation, service targeting, and future budgeting. In addition, the information collection provides demographic data on volunteers and tracks volunteer service. The data elements of this information collection are the basis for quarterly data gathering which is forwarded through the Major Commands to the Air Staff.
Affected Public: Individuals or Households.
Frequency: On Occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Mr. Edward C. Springer.
Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.
DOD Clearance Officer: Mr. Robert Cushing.
Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: November 30, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–31240 Filed 12–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Medical and Dental Services for Fiscal Year 2001

SUMMARY: Notice is hereby given that on September 30, 2000, the Deputy Chief Financial Officer approved the following reimbursement rates for inpatient and outpatient medical care to be provided in FY 2001. These rates were effective October 1, 2000.

The FY 2001 Department of Defense (DoD) reimbursement rates for inpatient, outpatient, and other services are provided in accordance with Title 10, United States Code, section 1095. Due to

size, the sections containing the Drug Reimbursement Rates (section IV.C.) and the rates for Ancillary Services Requested by Outside Providers (section IV.D.) are not included in this package. Those rates are available from the TRICARE Management Activity's Uniform Business Office website: *http://www.tricare.osd.mil/ebc/rm/rm_home.html.* The Office of the Assistant Secretary of Defense (Health Affairs) point of contact is MAJ Rose Layman. She can be reached at (703) 681–8910 or DSN 761–8910. The medical and dental service rates in this package (including the rates for ancillary services and other procedures requested by outside providers) were effective October 1, 2000. Pharmacy rates are updated on an as needed basis.

Dated: December 1, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Inpatient, Outpatient and Other Rates and Charges

I. Inpatient Rates[1 2]

Per inpatient day	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
A. Burn Center	$4,144.00	$5,694.00	$6,016.00
B. Surgical Care Services (Cosmetic Surgery)	1,895.00	2,604.00	2,752.00
C. All Other Inpatient Services (Based on Diagnosis Related Groups (DRG).[3]			

1. Average FY 2001 Direct Care Inpatient Reimbursement Rates

Adjusted standard amount	IMET	Ineragency	Other (full/third party)
Large Urban	$2,986.00	$5,712.00	$6,002.00
Other Urban/Rural	3,468.00	6,633.00	7,004.00
Overseas	3,872.00	9,045.00	9,489.00

2. Overview

The FY 2001 inpatient rates are based on the cost per Diagnosis Related Group (DRG), which is the inpatient full reimbursement rate per hospital discharge weighted to reflect the intensity of the principal diagnosis, secondary diagnoses, procedures, patient age, etc. involved. The average cost per Relative Weighted Product (RWP) for large urban, other urban/rural, and overseas facilities will be published annually as an inpatient adjusted standardized amount (ASA) (see paragraph I.C.1., above). The ASA will be applied to the RWP for each inpatient case, determined from the DRG weights, outlier thresholds, and payment rules published annually for hospital reimbursement rates under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) pursuant to 32 CFR 199.14(a)(1), including adjustments for length of stay (LOS) outliers. Each large urban or other urban/rural Military Treatment Facility (MTF) providing inpatient care has their own ASA rate. The MTF-specific ASA rate is the published ASA rate adjusted for area wage differences and indirect medical education (IME) for the discharging hospital (see Attachment 1). The MTF-specific ASA rate submitted on the claim is the rate that payers will use for reimbursement purposes. Overseas MTFs use the rates specified in paragraph I.C.1. For providers performing inpatient care at a civilian facility for a DoD beneficiary, see note 3. For a more complete description of the development of MTF-specific ASAs and how they are applied refer to the ASA Primer at: http://www.tricare.osd.mil/org/pae/asa_primer/asa_primer.html.

An example of how to apply DoD costs to a DRG standardized weight to arrive at DoD costs is contained in paragraph I.C.3., below.

3. Example of Adjusted Standardized Amounts for Inpatient Stays

Figure 1 shows examples for a nonteaching hospital (Reynolds Army Community Hospital) in Other Urban/Rural areas.

a. The cost to be recovered is the MTF cost for medical services provided. Billings will be at the third party rate.

b. DRG 020: Nervous System Infection Except Viral Meningitis. The RWP for an inlier case is the CHAMPUS weight of 2.2244. (DRG statistics shown are from FY 1999.)

c. The MTF-applied ASA rate is $6,831 (Reynolds Army Community Hospital's third party rate as shown in Attachment 1).

d. The MTF cost to be recovered is the RWP factor (2.2244) in subparagraph 3.b., above, multiplied by the amount ($6,831) in subparagraph 3.c., above.

e. Cost to be recovered is $15,195.

FIGURE 1.—THIRD PARTY BILLING EXAMPLES

DRG No.	DRG description	DRG weight	Arithmetic mean LOS	Geometric mean LOS	Short stay threshold	Long stay threshold
020	Nervous System Infection Except Viral Meningitis	2.2244	8.3	5.8	1	29

Hospital	Location	Area wage rate index	IME adjustment	Group ASA	MTF-applied ASA
Reynolds Army Community Hospital	Other Urban/Rural	.9156	1.0	$7,004	$6,831

Patient	Length of stay	Days above threshold	Relative weighted product			TPC amount***
			Inlier*	Outlier**	Total	
#1	7 days	0	2.2244	000	2.2244	$15,195
#2	21 days	0	2.2244	000	2.2244	15,195
#3	35 days	6	2.2244	.7594	2.9838	20,382

*DRG Weight.
**Outlier calculation=33 percent of per diem weight×number of outlier days.
=.33 (DRG Weight/Geometric Mean LOS)×(Patient LOS − Long Stay Threshold).
=.33 (2.2244/5.8)×(35 − 29).
=.33 (.38352)×6 (take out to five decimal places).
.12656×6 (carry to five decimal places).
.7594 (carry to four decimal places).
***MTF-Applied ASA×Total RWP.

II. Outpatient Rates—Per Visit [1 2]

MEPRS code [4]	Clinical service	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
	A. Medical Care			
BAA	Internal Medicine	$147.00	$204.00	$216.00
BAB	Allergy	80.00	111.00	117.00
BAC	Cardiology	129.00	180.00	190.00
BAE	Diabetic	105.00	146.00	154.00
BAF	Endocrinology (Metabolism)	151.00	210.00	222.00
BAG	Gastroenterology	183.00	255.00	269.00
BAH	Hematology	286.00	398.00	420.00
BAI	Hypertension	216.00	301.00	318.00
BAJ	Nephrology	221.00	307.00	324.00
BAK	Neurology	165.00	229.00	242.00
BAL	Outpatient Nutrition	69.00	96.00	101.00
BAM	Oncology	201.00	280.00	295.00
BAN	Pulmonary Disease	186.00	259.00	273.00
BAO	Rheumatology	139.00	194.00	205.00
BAP	Dermatology	115.00	160.00	169.00
BAQ	Infectious Disease	181.00	252.00	266.00
BAR	Physical Medicine	115.00	160.00	169.00
BAS	Radiation Therapy	169.00	235.00	248.00
BAT	Bone Marrow Transplant	190.00	264.00	279.00
BAU	Genetic	330.00	460.00	485.00
BAV	Hyperbaric	344.00	480.00	506.00
	B. Surgical Care			
BBA	General Surgery	215.00	299.00	316.00
BBB	Cardiovascular and Thoracic Surgery	419.00	584.00	616.00
BBC	Neurosurgery	249.00	347.00	366.00
BBD	Ophthalmology	130.00	181.00	191.00
BBE	Organ Transplant	1,106.00	1,541.00	1,625.00
BBF	Otolaryngology	149.00	207.00	219.00
BBG	Plastic Surgery	168.00	235.00	247.00
BBH	Proctology	125.00	174.00	184.00
BBI	Urology	164.00	228.00	240.00
BBJ	Pediatric Surgery	89.00	125.00	131.00
BBK	Peripheral Vascular Surgery	98.00	137.00	145.00
BBL	Pain Management	138.00	193.00	203.00
BBM	Vascular and Interventional Radiology	493.00	687.00	724.00
	C. Obstetrical and Gynecological (OB–GYN) Care			
BCA	Family Planning	76.00	106.00	111.00
BCB	Gynecology	127.00	177.00	187.00
BCC	Obstetrics	104.00	144.00	152.00
BCD	Breast Cancer Clinic	240.00	334.00	352.00

MEPRS code [4]	Clinical service	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
	D. Pediatric Care			
BDA	Pediatric	92.00	128.00	134.00
BDB	Adolescent	83.00	115.00	121.00
BDC	Well Baby	63.00	87.00	92.00
	E. Orthopaedic Care			
BEA	Orthopaedic	143.00	200.00	211.00
BEB	Cast	89.00	123.00	130.00
BEC	Hand Surgery	76.00	106.00	112.00
BEE	Orthotic Laboratory	93.00	130.00	137.00
BEF	Podiatry	80.00	112.00	118.00
BEZ	Chiropractic	38.00	53.00	55.00
	F. Psychiatric and/or Mental Health Care			
BFA	Psychiatry	165.00	230.00	242.00
BFB	Psychology	115.00	160.00	169.00
BFC	Child Guidance	92.00	128.00	135.00
BFD	Mental Health	148.00	206.00	217.00
BFE	Social Work	147.00	205.00	217.00
BFF	Substance Abuse	141.00	197.00	208.00
	G. Family Practice/Primary Medical Care			
BGA	Family Practice	107.00	149.00	157.00
BHA	Primary Care	109.00	151.00	160.00
BHB	Medical Examination	111.00	155.00	163.00
BHC	Optometry	72.00	100.00	105.00
BHD	Audiology	52.00	73.00	77.00
BHE	Speech Pathology	122.00	170.00	180.00
BHF	Community Health	85.00	118.00	125.00
BHG	Occupational Health	108.00	151.00	159.00
BHH	TRICARE Outpatient	74.00	104.00	109.00
BHI	Immediate Care	161.00	225.00	237.00
	H. Emergency Medical Care			
BIA	Emergency Medical	173.00	242.00	255.00
	I. Flight Medical Care			
BJA	Flight Medicine	124.00	173.00	182.00
	J. Underseas Medical Care			
BKA	Underseas Medicine	77.00	108.00	114.00
	K. Rehabilitative Services			
BLA	Physical Therapy	56.00	79.00	83.00
BLB	Occupational Therapy	75.00	104.00	110.00

III. Ambulatory Procedure Visit (APV)—Per Visit [5]

MEPRS code [4]	Clinical service	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
	Medical Care			
BB	Surgical Care	$1,313.00	$1,829.00	$1,929.00
BE	Orthopaedic Care	1,664.00	2,319.00	2,446.00
All Other	B clinics other than BB and BE, to include those B clinics where: 1. There is an APU established within DoD guidelines AND 2. There is a rate established for that clinic in section II. Some B clinics, such as BF, BI, BJ and BL, perform the type of services where the establishment of an APU would not be within appropriate clinical guidelines.	378.00	527.00	556.00

IV. Other Rates and Charges[1 2]

MEPRS code[4]	Clinical service	International military education & training (IMET)	Interagency & other Federal agency sponsored patients	Other (full/third party)
	A. Per Each			
FBI	Immunization	$22.00	$31.00	$32.00
	B. Family Member Rate (Formerly Military Dependents Rate)			
		11.45		
	C. Reimbursement Rates for Drugs Requested by Outside Providers[6 15]			
	D. Ancillary Services Requested by an Outside Provider—Per Procedure[7 5]			
DB	Laboratory procedures requested by an outside provider CPT '00 Weight Multiplier.	15.00	22.00	23.00
DC, DI	Radiology procedures requested by an outside provider CPT '00 Weight Multiplier.	79.00	115.00	120.00
	E. Dental Rate—Per Procedure[11]			
	Dental Services ADA code weight multiplier.	73.00	112.00	117.00
	F. Ambulance Rate—Per Hour[12]			
FEA	Ambulance	81.00	113.00	120.00
	G. AirEvac Rate—Per Trip (24 Hour Period)[13]			
	AirEvac Services—Ambulatory	339.00	473.00	499.00
	AirEvac Service—Litter	989.00	1,379.00	1,454.00
	H. Observation Rate—Per Hour[14]			
	Observation Services—Hour	20.00	28.00	30.00

V. Elective Cosmetic Surgery Procedures and Rates

Cosmetic surgery procedure	International classification diseases (ICD–9)	Current procedural terminology (CPT)[8]	FY 2001 charge[9]	Amount of charge
Mammaplasty—augmentation	85.50, 85.32, 85.31	19325, 19324, 19318	Inpatient Surgical Care Per Diem or APV	(a b)
Mastopexy	85.60	19316	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Facial Rhytidectomy	86.82, 86.22	15824	Inpatient Surgical Care Per Diem or APV	(a b)
Blepharoplasty	08.70, 08.44	15820, 15821, 15822, 15823.	Inpatient Surgical Care Per Diem or APV	(a b c)
Mentoplasty (Augmentation/Reduction).	76.68, 76.67	21208, 21209	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Abdominoplasty	86.83	15831	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Lipectomy Suction per region[10]	86.83	15876, 15877, 15878, 15879.	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Rhinoplasty	21.87, 21.86	30400, 30410	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Scar Revisions beyond CHAMPUS.	86.84	1578	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Mandibular or Maxillary Repositioning.	76.41	21194	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Dermabrasion	86.25	15780	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Hair Restoration	86.64	15775	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Removing Tattoos	86.25	15780	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Chemical Peel	86.24	15790	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	(a b c)
Arm/Thigh Dermolipectomy	86.83	15836/15832	Inpatient Surgical Care Per Diem or APV	(a b)
Refractive surgery			APY or applicable Outpatient Clinic Rate	(b c e)
Radial Keratotomy		65771		

Cosmetic surgery procedure	International classification diseases (ICD–9)	Current procedural terminology (CPT) [8]	FY 2001 charge [9]	Amount of charge
Other Procedure (if applies to laser or other refractive surgery).		66999		
Otoplasty		69300	APV or applicable Outpatient Clinic Rate	([b c])
Brow Lift	86.3	15839	Inpatient Surgical Care Per Diem or APV or applicable Outpatient Clinic Rate.	([a b c])

Notes on Cosmetic Surgery Charges

[a] Per diem charges for inpatient surgical care services are listed in section I.B. (See notes 8 through 10, below, for further details on reimbursable rates.)

[b] Charges for ambulatory procedure visits (formerly same day surgery) are listed in section III. (See notes 8 through 10, below, for further details on reimbursable rates.) The ambulatory procedure visit (APV) rate is used if the elective cosmetic surgery is performed in an ambulatory procedure unit (APU).

[c] Charges for outpatient clinic visits are listed in sections II.A–K. The outpatient clinic rate is not used for services provided in an APU. The APV rate should be used in these cases.

[d] Charge is solely determined by the location of where the care is provided and is not to be based on any other criteria. An APV rate can only be billed if the location has been established as an APU following all required DoD guidelines and instructions.

[e] Refer to Office of the Assistant Secretary of Defense (Health Affairs) Policy on Vision Correction Via Laser Surgery For Non-Active Duty Beneficiaries, April 7, 2000, for further guidance on billing for these services. It can be downloaded from: http://www.tricare.osd.mil/policy/2000poli.htm.

Notes on Reimbursement Rates

[1] Percentages can be applied when preparing bills for both inpatient and outpatient services. Pursuant to the provisions of 10 U.S.C. 1095, the inpatient Diagnosis Related Groups and inpatient per diem percentages are 98 percent hospital and 2 percent professional charges. The outpatient per visit percentages are 89 percent outpatient services and 11 percent professional charges.

[2] DoD civilian employees located in overseas areas shall be rendered a bill when services are performed.

[3] The cost per Diagnosis Related Group (DRG) is based on the inpatient full reimbursement rate per hospital discharge, weighted to reflect the intensity of the principal and secondary diagnoses, surgical procedures, and patient demographics involved. The adjusted standardized amounts (ASA) per Relative Weighted Product (RWP) for use in the direct care system is comparable to procedures used by the Health Care Financing Administration (HCFA) and the Civilian Health and Medical Program for the Uniformed Services (CHAMPUS). These expenses include all direct care expenses associated with direct patient care. The average cost per RWP for large urban, other urban/rural, and overseas will be published annually as an adjusted standardized amount (ASA) and will include the cost of inpatient professional services. The DRG rates will apply to reimbursement from all sources, not just third party payers.

MTFs without inpatient services, whose providers are performing inpatient care in a civilian facility for a DoD beneficiary, can bill payers the percentage of the charge that represents professional services as provided in [1] above. The ASA rate used in these cases, based on the absence of a ASA rate for the facility, will be based on the average ASA rate for the type of metropolitan statistical area the MTF resides, large urban, other urban/rural, or overseas (see paragraph I.C.1.). The Uniform Business Office must receive documentation of care provided in order to produce a bill.

[4] The Medical Expense and Performance Reporting System (MEPRS) code is a three digit code which defines the summary account and the subaccount within a functional category in the DoD medical system. MEPRS codes are used to ensure that consistent expense and operating performance data is reported in the DoD military medical system. An example of the MEPRS hierarchical arrangement follows:

MEPRS Code

B: Outpatient Care (Functional Category)
BA: Medical Care (Summary Account)
BAA: Internal Medicine (Subaccount)

[5] Ambulatory procedure visit is defined in DoD Instruction 6025.8, ''Ambulatory Procedure Visit (APV),'' dated September 23, 1996, as immediate (day of procedure) pre-procedure and immediate post-procedure care requiring an unusual degree of intensity and provided in an ambulatory procedure unit (APU). An APU is a location or organization within an MTF (or freestanding outpatient clinic) that is specially equipped, staffed, and designated for the purpose of providing the intensive level of care associated with APVs. Care is required in the facility for less than 24 hours. All expenses and workload are assigned to the MTF established APU associated with the referring clinic. The BB and BE APV rates are to be used only by clinics that are subaccounts under these summary accounts (see [4] for an explanation of MEPRS hierarchical arrangement). The All Other APV rate is to be used *only* by those clinics that are *not* a subaccount under BB or BE. In addition, APV rates may only be utilized for clinics where there is a clinic rate established. For example, BLC, Neuromuscular Screening, no longer has an established rate. Therefore, an APU cannot be defined and an APV cannot be billed for this clinic.

[6] Third party payers (such as insurance companies) shall be billed for prescription services when beneficiaries who have medical insurance obtain medications from MTFs that are prescribed by providers external to the MTF (*e.g.,* physicians and dentists). Eligible beneficiaries (family members or retirees with medical insurance) are not liable personally for this cost and shall not be billed by the MTF. Medical Services Account (MSA) patients, who are not beneficiaries as defined in 10 U.S.C. 1074 and 1076, are charged at the ''Other'' rate if they are seen by an outside provider and only come to the MTF for prescription services. The standard cost of medications ordered by an outside provider includes the DoD-wide average cost of the drug, calculated by National Drug Code (NDC) number. The prescription charge is calculated by multiplying the number of units (*e.g.,* tablets or capsules) by the unit cost and adding $6.00 for the cost of dispensing the prescription. Dispensing costs include overhead, supplies, and labor, etc. to fill the prescription.

The list of drug reimbursement rates is too large to include in this document. Those rates are available from the TRICARE Management Activity's Uniform Business Office website: http://www.tricare.osd.mil/ebc/rm/rm_home.html.

[7] The list of FY 2001 rates for ancillary services requested by outside providers and obtained at a MTF is too large to include in this document. Those rates are available from the TRICARE Management Activity's Uniform Business Office website: http://www.tricare.osd.mil/ebc/rm/rm_home.html.

Charges for ancillary services requested by an outside provider (*e.g.,* physicians and dentists) are relevant to the Third Party Collection Program. Third party payers (such as insurance companies) shall be billed for ancillary services when beneficiaries who

have medical insurance obtain services from the MTF which are prescribed by providers external to the MTF. Laboratory and Radiology procedure costs are calculated by multiplying the DoD-established weight for the Physicians' Current Procedural Terminology (CPT 00) code by either the laboratory or radiology multiplier (section IV.D.). Radiology procedures performed by Nuclear Medicine use the same methodology as Radiology for calculating a charge because their workload and expenses are included in the establishment of the Radiology multiplier.

Eligible beneficiaries (family members or retirees with medical insurance) are not personally liable for this cost and shall not be billed by the MTF. MSA patients, who are not beneficiaries as defined by 10 U.S.C. 1074 and 1076, are charged at the ''Other'' rate if they are seen by an outside provider and only come to the MTF for ancillary services.

[8] The attending physician is to complete the CPT 00 code to indicate the appropriate procedure followed during cosmetic surgery. The appropriate rate will be applied depending on the treatment modality of the patient: ambulatory procedure visit, outpatient clinic visit or inpatient surgical care services.

[9] Family members of active duty personnel, retirees and their family members, and survivors shall be charged elective cosmetic surgery rates. Elective cosmetic surgery procedures information is contained in section V. The patient shall be charged the rate as specified in the FY 2001 reimbursable rates for an episode of care. The charges for elective cosmetic surgery are at the full reimbursement rate (designated as the ''Other'' rate) for inpatient per diem surgical care services in section I.B., ambulatory procedure visits as contained in section III., or the appropriate outpatient clinic rate in sections II.A–K. The patient is responsible for the cost of the implant(s) and the prescribed cosmetic surgery rate. (Note: The implants and procedures used for the augmentation mammaplasty are in compliance with Federal Drug Administration guidelines.)

[10] Each regional lipectomy shall carry a separate charge. Regions include head and neck, abdomen, flanks, and hips.

[11] Dental service rates are based on a dental rate multiplied by the DoD established weight for the American Dental Association (ADA) code performed. For example, for ADA code 00270, bite wing single film, the weight is 0.15. The weight of 0.15 is multiplied by the appropriate rate, IMET, IAR, or Full/Third Party rate to obtain the charge. If the Full/Third Party rate is used, then the charge for this ADA code will be $17.55 ($117×.15 = $17.55).

The list of FY 2001 ADA codes and weights for dental services is too large to include in this document. Those rates are available from the TRICARE Management Activity's Uniform Business Office website: http://www.tricare.osd.mil/ebc/rm/rm_home.html.

[12] Ambulance charges shall be based on hours of service in 15 minute increments. The rates listed in section IV.F. are for 60 minutes or 1 hour of service. Providers shall calculate the charges based on the number of hours (and/or fractions of an hour) that the ambulance is logged out on a patient run. Fractions of an hour shall be rounded to the next 15 minute increment (*e.g.,* 31 minutes shall be charged as 45 minutes.).

[13] Air in-flight medical care reimbursement charges are determined by the status of the patient (ambulatory or litter) and are per patient during a 24-hour period. The appropriate charges are billed only by the Air Force Global Patient Movement Requirement Center (GPMRC). These charges are only for the cost of providing medical care. Flight charges are billed by GPMRC separately.

[14] Observation Services are billed at the hourly charge. Begin counting when the patient is placed in the observation bed and round to the nearest hour. For example, if a patient has received 1 hour and 20 minutes of observation, then you bill for 1 hour of service. If the status of a patient changes to inpatient, the charges for observation services are added to the DRG assigned to the case and not separately billed. If a patient is released from observation status and is sent to an APV, the charges for observation services are not billed separately but are added to the APV rate to recover all expenses.

[15] Final rule 32 CFR Part 220, published February 16, 2000, eliminated the dollar threshold for high cost ancillary services and the associated term ''high cost ancillary service.'' The phrase ''high cost ancillary service'' is replaced with the phrase ''ancillary services requested by an outside provider.'' The elimination of the threshold also eliminated the need to bundle costs whereby a patient is billed if the total cost of ancillary services in a day (defined as 0001 hours to 2400 hours) exceeds $25.00. The elimination of the threshold is effective as per date stated in final rule 32 CFR Part 220.

Attachment 1

ADJUSTED STANDARDIZED AMOUNTS (ASA) BY MILITARY TREATMENT FACILITY

DMISID	MTF name	SERV	Full cost rate	Inter-agency rate	IMET rate	TPC rate
0003	Lyster AH—Ft. Rucker	A	$6,637	$6,286	$3,286	$6,637
0004	502nd Med Grp—Maxwell AFB	F	6,984	6,614	3,458	6,984
0005	Bassett ACH—Ft. Wainwright	A	7,152	6,774	3,541	7,152
0006	3rd Med Grp—Elmendorf AFB	F	7,041	6,668	3,486	7,041
0009	56th Med Grp—Luke AFB	F	5,986	5,697	2,978	5,986
0014	60th Med Grp—Travis AFB	F	9,912	9,387	4,907	9,912
0018	30th Med Grp—Vandenberg AFB	F	7,035	6,663	3,483	7,035
0019	95th Med Grp—Edwards AFB	F	7,004	6,633	3,468	7,004
0024	NH Camp Pendleton	N	7,614	7,245	3,787	7,614
0028	NH Lemoore	N	6,997	6,627	3,465	6,997
0029	NH San Diego	N	9,744	9,273	4,847	9,744
0030	NH Twenty Nine Palms	N	6,111	5,815	3,039	6,111
0032	Evans ACH—Ft. Carson	A	6,946	6,578	3,439	6,946
0033	10th Med Grp—USAF Academy	F	6,994	6,623	3,463	6,994
0037	Walter Reed AMC—Washington DC	A	9,010	8,574	4,482	9,010
0038	NH Pensacola	N	8,939	8,465	4,426	8,939
0039	NH Jacksonville	N	7,537	7,173	3,749	7,537
0042	96th Med Grp—Eglin AFB	F	8,309	7,869	4,114	8,309
0043	325th Med Grp—Tyndall AFB	F	7,002	6,631	3,467	7,002
0045	6th Med Grp—MacDill AFB	F	5,991	5,702	2,980	5,991
0047	Eisenhower AMC—Ft. Gordon	A	8,550	8,098	4,233	8,550
0048	Martin ACH—Ft. Benning	A	7,987	7,564	3,954	7,987
0049	Winn ACH—Ft. Stewart	A	6,644	6,292	3,289	6,644
0052	Tripler AMC—Ft. Shafter	A	9,533	9,029	4,720	9,533
0053	366th Med Grp—Mountain Home AFB	F	6,982	6,612	3,457	6,982
0055	375th Med Grp—Scott AFB	F	7,625	7,256	3,793	7,625
0056	NH Great Lakes	N	6,063	5,770	3,016	6,063

ADJUSTED STANDARDIZED AMOUNTS (ASA) BY MILITARY TREATMENT FACILITY—Continued

DMISID	MTF name	SERV	Full cost rate	Inter-agency rate	IMET rate	TPC rate
0057	Irwin AH—Ft. Riley	A	6,521	6,176	3,229	6,521
0060	Blanchfield ACH—Ft. Campbell	A	6,605	6,255	3,270	6,605
0061	Ireland ACH—Ft. Knox	A	6,829	6,467	3,381	6,829
0064	Bayne-Jones ACH—Ft. Polk	A	6,573	6,225	3,254	6,573
0066	89th Med Grp—Andrews AFB	F	8,062	7,672	4,010	8,062
0067	NNMC Bethesda	N	9,786	9,313	4,868	9,786
0073	81st Med Grp—Keesler AFB	F	8,772	8,308	4,343	8,772
0075	Wood ACH—Ft. Leonard Wood	A	6,539	6,193	3,237	6,539
0078	55th Med Grp—Offutt AFB	F	8,697	8,236	4,306	8,697
0079	99th Med Grp—Nellis AFB	F	6,002	5,712	2,986	6,002
0083	377th Med Grp—Kirtland AFB	F	6,971	6,602	3,452	6,971
0084	49th Med Grp—Holloman AFB	F	7,004	6,633	3,468	7,004
0086	Keller ACH—West Point	A	7,296	6,909	3,612	7,296
0089	Womack AMC—Ft. Bragg	A	7,817	7,403	3,870	7,817
0091	NH Camp LeJeune	N	6,744	6,387	3,339	6,744
0092	NH Cherry Point	N	6,788	6,429	3,361	6,788
0093	319th Med Grp—Grand Forks AFB	F	7.032	6,660	3,482	7.032
0094	5th Med Grp—Minot AFC	F	6,857	6,494	3,395	6,857
0095	74th Med Grp—Wright-Patterson AFB	F	10,371	9,822	5,135	10,371
0096	72nd Med Grp—Tinker AFB	F	6,001	5,711	2,985	6,001
0097	97th Med Grp—Altus AFB	F	6,976	6,607	3,454	6,976
0098	Reynolds ACH—Ft. Sill	A	6,831	6,469	3,382	6,831
0100	NH Newport	N	6,002	5,712	2,986	6,002
0101	20th Med Grp—Shaw AFB	F	6,964	6,595	3,448	6,964
0103	NH Charleston	N	6,879	6,514	3,406	6,879
0104	NH Beaufort	N	6,871	6,507	3,402	6,871
0105	Moncrief ACH—Ft. Jackson	A	6,961	6,592	3,446	6,961
0106	28th Med Grp—Ellsworth AFB	F	6,939	6,572	3,436	6,939
0108	Wm Beaumont AMC—Ft. Bliss	A	8,329	7,888	4,124	8,329
0109	Brooke AMC—Ft. Sam Houston	A	8,511	8,099	4,233	8,511
0110	Darnall AH—Ft. Hood	A	8,606	8,151	4,261	8,606
0112	7th Med Grp—Dyess AFB	F	6,892	6,528	3,413	6,892
0113	82nd Med Grp—Sheppard AFB	F	6,903	6,537	3,418	6,903
0117	59th Med Wing—Lackland AFB	F	8,640	8,222	4,297	8,640
0119	75th Med Grp—Hill AFB	F	5,983	5,693	2,976	5,983
0120	1st Med Grp—Langley AFB	F	5,954	5,666	2,962	5,954
0121	McDonald ACH—Ft. Eustis	A	5,649	5,376	2,810	5,649
0123	Dewitt AH—Ft. Belvoir	A	8,237	7,839	4,097	8,237
0124	NH Portsmouth	N	7,469	7,107	3,715	7,469
0125	Madigan AMC—Ft. Lewis	A	11,018	10,435	5,455	11,018
0126	NH Bremerton	N	8,165	7,733	4,043	8,165
0127	NH Oak Harbor	N	6,283	5,979	3,125	6,283
0129	90th Med Grp—F.E. Warren AFB	F	6,989	6,619	3,460	6,989
0131	Weed ACH—Ft. Irwin	A	7,003	6,633	3,467	7,003
0449	24th Med Grp—Howard	F	9,489	9,045	3,872	9,489
0606	95th CSH—Heidelberg	A	9,489	9,045	3,872	9,489
0607	Landstuhl Rgn MC	A	9,489	9,045	3,872	9,489
0609	67th CSH—Wurzburg	A	9,489	9,045	3,872	9,489
0612	121st Gen Hosp—Seoul	A	9,489	9,045	3,872	9,489
0615	NH Guantanamo Bay	N	9,489	9,045	3,872	9,489
0616	NH Roosevelt Roads	N	9,489	9,045	3,872	9,489
0617	NH Naples	N	9,489	9,045	3,872	9,489
0618	NH Rota	N	9,489	9,045	3,872	9,489
0620	NH Guam	N	9,489	9,045	3,872	9,489
0621	NH Okinawa	N	9,489	9,045	3,872	9,489
0622	NH Yokosuka	N	9,489	9,045	3,872	9,489
0623	NH Keflavik	N	9,489	9,045	3,872	9,489
0624	BH Sigonella	N	9,489	9,045	3,872	9,489
0633	48th Med Grp—RAF Lakenheath	F	9,489	9,045	3,872	9,489
0635	39th Med Grp—Incirlik AB	F	9,489	9,045	3,872	9,489
0638	51st Med Grp—Osan AB	F	9,489	9,045	3,872	9,489
0639	35th Med Grp—Misawa	F	9,489	9,045	3,872	9,489
0640	374th Med Grp—Yokota AB	F	9,489	9,045	3,872	9,489
0805	52nd Med Grp—Spangdahlem	F	9,489	9,045	3,872	9,489
0808	31st Med Grp—Aviano	F	9,489	9,045	3,872	9,489

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DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial; Proposed Amendments

AGENCY: Joint Service Committee on Military Justice (JSC).

ACTION: Notice of summary of public comment received regarding proposed amendments to the Manual for Courts-Martial, United States, (2000 ed.).

SUMMARY: The JSC is forwarding final proposed amendments to the Manual for Courts-Martial, United States, (2000 ed.) (MCM) to the Department of Defense. The proposed changes, resulting from the JSC's 2000 annual review of the MCM, concern the rules of procedure applicable in trials by courts-martial. The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, ''Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon,'' May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

ADDRESSES: Comments and materials received from the public are available for inspection or copying at the U.S. Air Force, Air Force Legal Services Agency, Military Justice Division, Room 202, 112 Luke Avenue, Bolling Air Force Base, Washington, DC 20332–8000, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lt Col Thomas C. Jaster, U.S. Air Force, Air Force Legal Services Agency, 112 Luke Avenue, Room 343, Bolling Air Force Base, Washington, DC 20332–8000, (202) 767–1539; FAX (202) 404–8755.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 2000, the JSC published a Notice of Proposed Amendments to the Manual for Courts-Martial, (MCM) United States, (2000 ed.). On June 15, 2000, the JSC also published a Notice of Public Meeting to receive comment on its 2000 draft annual review of the Manual for Courts-Martial. On June 28, 2000, the public meeting was held. Three individuals attended and one individual provided oral comment. The JSC also received one letter commenting on the proposed amendments.

Purpose

The proposed changes concern the rules of procedure applicable in trials by courts-martial. More specifically, the proposed changes: (1) Add references to Military Rule of Evidence 513, *Psychotherapist-patient privilege*, in Rule for Courts-Martial (R.C.M.) 701, *Discovery:* (2) clarify the analysis accompanying R.C.M. 707, *Speedy trial*, in light of current case law; and (3) clarify R.C.M. 1003 and R.C.M. 1107, governing the authority of a court-martial to adjudge and the convening authority to approve, the combination of both a fine and forfeitures at summary and special courts-martial.

Discussion of Comments and Changes

No substantive comment was received on the proposed amendments except for an expressed desire for a fuller rationale accompanying future changes. The JSC has considered the oral and written comment provided and is satisfied that the proposed amendments are appropriate to implement. However, the JSC has reexamined the analysis accompanying R.C.M. 707 and has modified it to more fully explain why the amendment was made. The JSC will forward the public comment and the proposed amendments, as modified, to the Department of Defense.

The oral and written comment, from the same individual, also discussed the new provision of the JSC's standard operating procedures requiring the JSC to invite members of the public to submit proposals as well as the form of that invitation in the May 15, 2000 Federal Register Notice of Proposed Amendments. The invitation provided that ''proposals should include reference to the specific provision you wish changed, a rationale for the proposed change, and specific and detailed proposed language to replace the current language.'' The invitation also said that ''[i]incomplete submissions will not be considered.'' The writer said that this last sentence would have a chilling effect on the submission of proposals. The writer also said that individuals or organizations may well perceive problems in the current MCM but may not have the time or expertise to prepare the type of submission required by the JSC. The writer believed that ideas for change should not be discouraged and that the burden should fall to the JSC, rather than to the public, to not only consider ideas for change but in addition take it upon itself to prepare full proposals to implement any ideas for change submitted which are deemed meritorious. The writer also believed that the invitation to the public should be clarified to note that proposals from the public which are not submitted within the public comment period will still be considered, but may not be able to be included in the next Annual Review. The writer recommended that the JSC's procedures be amended to implement the suggestions and that the rules pertaining to public participation in the MCM rulemaking process be included in appropriate DOD Directives published in the Code of Federal Regulations and in the MCM. The JSC has considered these comments and have decided to change the text of the invitation in next year's notice. To best serve the JSC in understanding the nature of the proposals, yet not chill their submission, the invitation will be changed to read ''incomplete proposals may not be considered'' as opposed to ''will not be considered.'' The JSC will also receive public proposals at any time but proposals received outside the public comment period may not be received in time to be considered in the next Annual Review. The JSC has concluded that it is not necessary to incorporate the new rules inviting public proposals into DoD Directive 5500.17, Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice or the MCM. The DoD Directive will be published in the MCM in future editions.

Proposed Amendments After Consideration of Public Comment Received

The proposed amendments to the Manual for Courts-Martial are as follows:

Amend the Discussion following R.C.M. 701(a)(2)(B) to read as follows:

''For specific rules concerning mental examinations of the accused or third party patients, *see* R.C.M. 701(f), R.C.M. 706, Mil. R. Evid. 302 and Mil. R. Evid. 513.''

Amend R.C.M. 701(b)(4) to read as follows:

''*Reports of examination and tests.* If the defense requests disclosure under subsection (a)(2)(B) of this rule, upon compliance with such request by the Government, the defense, on request of trial counsel, shall (except as provided in R.C.M. 706, Mil. R. Evid. 302 and Mil. R. Evid. 513) permit the trial counsel to inspect any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, which are within the possession, custody, or control of the defense which the defense intends to introduce as evidence in the defense case-in-chief at trial or which were

prepared by a witness whom the defense intends to call at trial when the results or reports relate to that witness' testimony.''

Amend the Analysis accompanying R.C.M. 701(b) by inserting the following prior to the current paragraph:

''*2000 Amendment:* Subsection (b)(4) was amended to also take into consideration the protections afforded by the new psychotherapist-patient privilege under Mil. R. Evid. 513.''

Amend the analysis accompanying R.C.M. 707(a) by inserting the following paragraph after the second full paragraph:

''*2000 Analysis Amendment: Burton* and its progeny were re-examined in 1993 when the Court of Military Appeals specifically overruled *Burton* and reinstated the earlier rule from *United States* v. *Tibbs,* 15 C.M.A. 350, 35 C.M.R. 322 (1965). *United States* v. *Kossman,* 38 M.J. 258 (C.M.A. 1993). In *Kossman,* the Court reinstated the ''reasonable diligence'' standard in determining whether the prosecution's progress toward trial for a confined accused was sufficient to satisfy the speedy trial requirement of Article 10, UCMJ.''

Amend R.C.M. 1003(b)(3) to read as follows:

''Fine. Any court-martial may adjudge a fine in lieu of or in addition to forfeitures. Special and summary courts-martial may not adjudge any fine or combination of fine and forfeitures in excess of the total amount of forfeitures that may be adjudged in that case. In order to enforce collection, a fine may be accompanied by a provision in the sentence that, in the event the fine is not paid, the person fined shall, in addition to any period of confinement adjudged, be further confined until a fixed period considered an equivalent punishment to the fine has expired. The total period of confinement so adjudged shall not exceed the jurisdictional limitations of the court-martial;''

Amend the Discussion accompanying R.C.M. 1003(b)(3) by adding the following after the second paragraph:

''Where the sentence adjudged at a special court-martial includes a fine, *see* R.C.M. 1107(d)(5) for limitations on convening authority action on the sentence.''

Amend the Analysis accompanying R.C.M. 1003(b)(3) by inserting the following before the discussion of subsection (b)(4):

''*2000 Amendment:* The amendment clearly defines the authority of special and summary courts-martial to adjudge both fines and forfeitures. *See generally, United States* v. *Tualla,* 52 M.J. 228 (2000).''

Add R.C.M. 1107(d)(5) as follows:

''*Limitations on sentence of a special court-martial where a fine has been adjudged.* A convening authority may not approve in its entirety a sentence adjudged at a special court-martial where, when approved, the cumulative impact of the fine and forfeitures, whether adjudged or by operation of Article 58b, UCMJ, would exceed the jurisdictional maximum dollar amount of forfeitures that may be adjudged at that court-martial.''

Amend the Analysis accompanying R.C.M. 1107(d) by inserting the following before the discussion of subsection (e):

''*2000 Amendment:* Subparagraph (d)(5). This subparagraph is new. The amendment addresses the impact of Article 58b, UCMJ. In special courts-martial, where the cumulative impact of a fine and forfeitures, whether adjudged or by operation of Article 58b, would otherwise exceed the total dollar amount of forfeitures that could be adjudged at the special court-martial, the fine and/or adjudged forfeitures should be disapproved or decreased accordingly. *See generally, United States* v. *Tualla,* 52 M.J. 228, 231–32 (2000).''

Dated: November 30, 2000.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 00–31247 Filed 12–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board will meet in closed session on March 7–8, 2001; May 16–17, 2001; and October 24–25, 2001, at the Pentagon, Arlington, Virginia.

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 will discuss interim findings and recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

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 meetings will be closed to the public.

Dated: November 30, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–31241 Filed 12–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The system of records identified as DHA 05, Military Depolyment Issues Files, is being altered to add two routine uses.

DATES: The changes will be effective on January 8, 2001 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Division, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 601–4725.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 30, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated

February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 1, 2000.

L. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHA 05

SYSTEM NAME:

Persian Gulf Veterans Illnesses Files (March 16, 1998, 63 FR 12786).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Military Deployment Issues Files'.

SYSTEM LOCATION:

Delete entry and replace with 'Office of the Special Assistant to the Secretary of Defense for Gulf War Illnesses, Medical Readiness, and Military Deployments, 5113 Leesburg Pike, Suite 901, Falls Church, VA 22041–3226; DoD Deployment Health Clinical Center (including the Comprehensive Clinical Evaluation and Special Care Programs), Walter Reed Army Medical Center, Washington, DC 20307–0002; DoD Deployment Health Research Center, Naval Health Research Center, 271 Catalina Boulevard, Barracks Building 322, San Diego, CA 92152–5302; DoD Deployment Health Medical Surveillance Center, Director of Epidemiology and Disease Surveillance, US Army Center for Health Promotion and Preventive Medicine, Aberdeen Proving Ground, MD 21010–5422; and US Armed Services Center for Unit Records Research, 7798 Cissna Road, Suite 101, Springfield, VA 22150–3197.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals who participated in military deployments or related operations, exercises, or tests, or served in Operation Desert Storm and/or Operation Desert Shield, the Kuwait Theater of Operations who feel they may have been exposed to biological, chemical, radiological, disease, or environmental agents.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete first three paragraphs and replace with 'Records consist of individual's name, Social Security Number or service number, last known or current address, occupational information, date and extent of involvement in military deployments or related operations, exercises, or tests, perceived issues, exposure information, medical treatment information, medical history of subject, and other documentation of reports of possible exposure to biological, chemical radiological, disease, or environmental agents.

The system contains information from unit and historical records, medical and hospital records, and information provided to the DoD by individuals with first-hand knowledge of reports of possible biological, chemical, radiological, disease, or environmental incidents. Information from health care providers who have evaluated patients with illnesses possibly related to military deployments is also included. Records include those documents, files, and other media that could relate to possible deployment health issues or illnesses.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'Records are collected and assembled to permit investigative examination and analysis of reports of possible exposure to biological, chemical, radiological, disease, or environmental agents incident to service in military deployments or related operations, exercises, or tests, or service in Gulf War deployments, to conduct scientific or related studies or medical follow-up programs, and to assist in the resolution of deployment related issues.'

ROUTINE USE(S) OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Delete paragraphs three and four, and replace with 'To the Department of Veterans Affairs and Health and Human Services, and the Centers for Disease Control and Prevention to permit investigative, scientific, medical and other analyses regarding deployment health issues and incidents and possible causes, symptoms, diagnoses, treatment, and other characteristics pertinent to service member's and veteran's health.

To the Military and Veterans Health Coordinating Board (MVHCB), which will coordinate with several agencies the clinical, research, and health risk communications issues relating to service member's (and veteran's) pre and post deployment health.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Disposition pending (until NARA approves retention and disposition schedule, treat records as permanent.)'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Information is from the individual's themselves, witnesses to a possible event, health care providers who have evaluated patients with illnesses possibly related to service in military deployments or related operations, exercises, or tests as well as extracts from official DoD records to include: Personnel files and lists, unit histories, medical records, and related sources.'

* * * * *

DHA 05

SYSTEM NAME:

Military Deployment Issues Files.

SYSTEM LOCATION:

Office of the Special Assistant to the Secretary of Defense for Gulf War Illnesses, Medical Readiness, and Military Deployments, 5113 Leesburg Pike, Suite 901, Falls Church, VA 22041–3226;

DoD Deployment Health Clinical Center (including the Comprehensive Clinical Evaluation and Special Care Programs), Walter Reed Army Medical Center, Washington, DC 20307–0002;

DoD Deployment Health Research Center, Naval Health Research Center, 271 Catalina Boulevard, Barracks Building 322, San Diego, CA 92152–5302;

DoD Deployment Health Medical Surveillance Center, Director of Epidemiology and Disease Surveillance, U.S. Army Center for Health Promotion and Preventive Medicine, Aberdeen Proving Ground, MD 21010–5422; and

U.S. Armed Services Center for Unit Records Research, 7798 Cissna Road, Suite 101, Springfield, VA 22150–3197.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who participated in military deployments or related operations, exercises, or tests, or served in Operation Desert Storm and/or Operation Desert Shield, the Kuwait Theater of Operations who feel they may have been exposed to biological, chemical, radiological, disease, or environmental agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records consist of individual's name, Social Security Number or service number, last known or current address, occupational information, date and extent of involvement in military deployments or related operations, exercises, or tests, perceived issues, exposure information, medical treatment information, medical history of subject, and other documentation of reports of possible exposure to biological, chemical radiological, disease, or environmental agents.

The system contains information from unit and historical records, medical and hospital records, and information provided to the DoD by individuals with first-hand knowledge of reports of possible biological, chemical, radiological, disease, or environmental incidents. Information from health care providers who have evaluated patients with illnesses possibly related to military deployments is also included. Records include those documents, files, and other media that could relate to possible deployment health issues or illnesses.

Records of diagnostic and treatment methods pursued on subjects following reports of possible incidental exposure are also included in this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 131, Office of the Secretary of Defense; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; and E.O. 9397 (SSN).

PURPOSE(S):

Records are collected and assembled to permit investigative examination and analysis of reports of possible exposure to biological, chemical, radiological, disease, or environmental agents incident to service in military deployments or related operations, exercises, or tests, or service in Gulf War deployments, to conduct scientific or related studies or medical follow-up programs, and to assist in the resolution of deployment related issues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Veterans Affairs and the Social Security Administration for appropriate consideration of individual claims for benefits for which that agency is responsible.

To the Department of Veterans Affairs and Health and Human Services, and the Centers for Disease Control and Prevention to permit investigative, scientific, medical and other analyses regarding deployment health issues and incidents and possible causes, symptoms, diagnoses, treatment, and other characteristics pertinent to service member's and veteran's health.

To the Military and Veterans Health Coordinating Board (MVHCB), which will coordinate with several agencies the clinical, research, and health risk communications issues relating to service member's (and veteran's) pre and post deployment health.

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are maintained in file folders; electronic records are stored on magnetic media; microfilm/microfiche are maintained in appropriate storage containers.

RETRIEVABILITY:

Records are retrieved by case number, name, Social Security Number or service number and key words.

SAFEGUARDS:

Access to areas where records maintained is limited to authorized personnel. Areas are protected by access control devices during working hours and intrusion alarm devices during non-duty hours.

RETENTION AND DISPOSAL:

Disposition pending (until NARA approves retention and disposition schedule, treat records as permanent.)

SYSTEM MANAGER(S) AND ADDRESS:

Special Assistant to the Secretary of Defense for Gulf War Illnesses, Medical Readiness, and Military Deployments, 5113 Leesburg Pike, Suite 901, Falls Church, VA 22041–3226.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Special Assistant to the Secretary of Defense for Gulf War Illnesses, Medical Readiness, and Military Deployments, 5113 Leesburg Pike, Suite 901, Falls Church, VA 22041–3226.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Special Assistant to the Secretary of Defense for Gulf War Illnesses, Medical Readiness, and Military Deployments, 5113 Leesburg Pike, Suite 901, Falls Church, VA 22041–3226.

CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is from the individual's themselves, witnesses to a possible event, health care providers who have evaluated patients with illnesses possibly related to service in military deployments or related operations, exercises, or tests as well as extracts from official DoD records to include: personnel files and lists, unit histories, medical records, and related sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–31246 Filed 12–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Patents for Exclusive License

AGENCY: Army Soldier and Biological Chemical Command (SBCCOM), U.S. Army, DoD

ACTION: Notice; correction.

SUMMARY: Reference the previous **Federal Register** notice (65 FR 68128), Tuesday, November 14, 2000, the notice announces the availability of Patents for Exclusive, Partially Exclusive or Nonexclusive Licenses. However, the notice should have stated: SBCCOM gives notice that it is contemplating the grant of an exclusive license in the United States and any applicable foreign country to practice the invention embodied in Patent Number 5,538,583, ''Method of Manufacturing a Laminated Textile Substrate for a Body Heating or Cooling Garment'' and Patent Number 5,320,164, ''Body Heating and Cooling Garment'' to Columbus Apparel Associates, Inc., (CAA) having a place of business in Woburn, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone; (508) 233–4928 or E-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 AND 37 CFR part 404. The following Patent Numbers, Titles and Issue dates are provided:

Patent Number: 5,538,583
Title: Method of Manufacturing a Laminated Textile Substrate for a Body Heating or Cooling Garments
Issue Date: July 23, 1996
Patent Number: 5,320,164

Title: Body Heating or Cooling Garment
Issue Date: June 14, 1994

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 00–31326 Filed 12–07–00; 8:45 am]
BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Patent Application for Exclusive License

AGENCY: Army Soldier and Biological Chemical Command (SBCCOM), U.S. Army, DoD.

ACTION: Notice.

SUMMARY: SBCCOM gives notice that it is contemplating the grant of an exclusive license in the United States and any applicable foreign country to practice the invention embodied in Patent Application Number 09/692,704 filed 10/19/00, entitled, ''Method and Apparatus for Making Body Heating and Cooling Garments'' to Columbus Apparel Associates, Inc., (CAA) having a place of business in Woburn, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone (508) 233–4928 or E-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404. The following Patent Application Number, Title and Filing date is provided:

Patent Application Number: 09/692,704
Title: Method and Apparatus for Making Body Heating and Cooling Garments.
Filing Date: October 19, 2000.

Gregory D. Showalter,
Army Federal Register Liaison Officer.
[FR Doc. 00–31325 Filed 12–7–00; 8:45 am]
BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to alter systems of records.

SUMMARY: The Department of the Army is altering five systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 8, 2001 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on November 27, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 30, 2000.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0027–1 DAJA

SYSTEM NAME:

General Legal Files (July 15, 1997, 62 FR 37892).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 3037 and 3072; 42 U.S.C. 10606; Department of Defense Directive 1030.1, Victim and Witness Assistance; and Army Regulation 27–1, Legal Services, Judge Advocate Legal Services.''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph ''To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.''

* * * * *

A0027–1—DAJA

SYSTEM NAME:

General Legal Files.

SYSTEM LOCATION:

Office of the Judge Advocate General, Headquarters, Department of the Army; Offices of Staff Judge Advocates; Judge Advocates; and Legal Counsels of Washington, DC 20310–2200; subordinate commands, installations, and organizations. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been the subject of administrative, civil or criminal matters referred to the Office of the Judge Advocate General or to legal offices of subordinate commands, installations, and organizations for legal opinion, legal review, or other action.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inquiries with substantiating documents, personnel actions, investigations, petitions, complaints, correspondence and responses thereto.

Examples of records include: Elimination and separation proceedings; questions pertaining to entitlement to pay; allowances, or other benefits; flying evaluation boards, line of duty investigations; reports of survey; other boards of investigating officers; DA Suitability Evaluation Board cases; DA Special Review Board efficiency report appeals; petitions to the Army Board for the Correction of Military Records; matters pertaining to on-post solicitation, revocation of privileges, and bars to entry on military installations; matters pertaining to appointments, promotions, enlistments, and discharges; matters pertaining to prohibited activities and conflicts of interest for Army personnel and employees; Article 138, UCMJ complaints; private relief legislation; military justice matters including requests for delivery of service members for trial by civilian authorities; appeals from nonjudicial punishment imposed under Article 15, UCMJ; appeals under Article 69, UCMJ; Secretarial review of officer dismissal cases; petitions for clemency, requests for pardons and requests for grants of immunity for civilian witnesses; matters pertaining to civilian employees and employees of non-appropriated fund Instrumentalities

including employment, pay, allowances, benefits, separations, discipline and adverse actions, grievances, equal opportunity complaints, awards, and claims processed by other agencies; and matters pertaining to attorney professional responsibility inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 3037 and 3072; 42 U.S.C. 10606; Department of Defense Directive 1030.1, Victim and Witness Assistance; and Army Regulation 27–1, Legal Services, Judge Advocate Legal Services.

PURPOSE(S):

To ensure legal sufficiency of Army operations, policies, procedures, and personnel actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552(b)(3) as follows:

Information from this system of records may be disclosed to the Department of Justice for grants of immunity and requests for pardons.

Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

To DoD 'Blanket Routine Uses' published at the beginning of the Army's complication of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY

Retrieved by individual's surname.

SAFEGUARDS:

Records are maintained in locked file cabinets and/or in locked offices in buildings employing security guards or on military installations protected by military police patrols.

RETENTION AND DISPOSAL:

Records at the Office of the Judge Advocate General, the Office of the Chief Counsel, and the Office, Chief of Engineers are permanent; at all of other locations, records are destroyed upon obsolescence.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, General Law Branch, Office of the Judge Advocate General, Department of the Army, 2200 Army Pentagon, Washington, DC 20310–2200.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in the record system should address written inquiries to the Department of the Army, Office of the Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200.

Individual should provide his/her full name, the address and telephone number, and any other personal data which would assist in identifying records pertaining to him/her such as current or former military status, date of birth, and, if applicable, specifies concerning the incident or event believed to be the basis for legal review.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves, contained in this record system should address written inquiries to the Department of the Army, Office of the Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200.

Individuals should provide his/her full name, the address and telephone number, and any other personal data which would assist in identifying records pertaining to him/her such as current or former military status, date of birth, and, if applicable, specifies concerning the incident or event believed to be the basis for legal review.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records, and other public and private records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (3) and published in 32 CFR part 505. For additional information contact the system manager.

Ao195–2b USACIDC

SYSTEM NAME:

Criminal Investigation and Crime Laboratory Files (May 15, 2000, 65 FR 30974).

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Add a new paragraph 'To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.'

* * * * *

A0195–2b USACIDC

SYSTEM NAME:

Criminal Investigation and Crime Laboratory Files.

SYSTEM LOCATION:

Headquarters, U.S. Army Criminal Investigation Command, 6010 6th

Street, Building 1465, Fort Belvoir, VA 22060–5506. Segments exist at subordinate U.S. Army Criminal Investigation Command elements. Addresses may be obtained from the Commander, U.S. Army Criminal Investigation Command, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5506.

An automated index of cases is maintained at the U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5585 and at the Defense Security Service, Army Liaison Office, P.O. Box 46060, Baltimore, MD 21240–6060.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual, civilian or military, involved in or suspected of being involved in or reporting possible criminal activity affecting the interests, property, and/or personnel of the U.S. Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, rank, date and place of birth, chronology of events; reports of investigation containing statements of witnesses, subject and agents; laboratory reports, documentary evidence, physical evidence, summary and administrative data pertaining to preparation and distribution of the report; basis for allegations; Serious or Sensitive Incident Reports, modus operandi and other investigative information from Federal, State, and local investigative agencies and departments; similar relevant documents. Indices contain codes for the type of crime, location of investigation, year and date of offense, names and personal identifiers of persons who have been subjects of electronic surveillance, suspects, subjects and victims of crimes, report number which allows access to records noted above; agencies, firms, Army and Defense Department organizations which were the subjects or victims of criminal investigations; and disposition and suspense of offenders listed in criminal investigative case files, witness identification data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 195–2, Criminal Investigation Activities; 42 U.S.C. 10606 et seq.; Department of Defense Directive 1030.1, Victim and Witness Assistance; and E.O. 9397 (SSN).

PURPOSE(S):

To conduct criminal investigations and crime prevention activities; to accomplish management studies involving the analysis, compilation of statistics, quality control, etc., to ensure that completed investigations are legally sufficient and result in overall improvement in techniques, training and professionalism.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information concerning criminal or possible criminal activity is disclosed to Federal, State, local and/or foreign law enforcement agencies in accomplishing and enforcing criminal laws; analyzing modus operandi, detecting organized criminal activity, or criminal justice employment. Information may also be disclosed to foreign countries under the provisions of the Status of Forces Agreements, or Treaties.

To the Department of Veterans Affairs to verify veterans claims. Criminal investigative files may be used to adjudicate veteran claims for disability benefits, post dramatic stress disorder, and other veteran entitlements.

To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance program, regarding the investigation and disposition of an offense.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilcation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; automated indices; computer magnetic tapes, disks, and printouts.

RETRIEVABILITY:

By name or other identifier of individual.

SAFEGUARDS:

Access is limited to designated authorized individuals having official need for the information in the performance of their duties. Buildings housing records are protected by security guards.

RETENTION AND DISPOSAL:

At Headquarters, U.S. Army Criminal Investigation Command (USACIDC), criminal investigative case files are retained for 40 years after final action, except that the USACIDC subordinate elements, such files are retained from 1 to 5 years depending on the level of such unit and the data involved. Laboratory reports at the USACIDC laboratory are destroyed after 5 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters, U.S. Army Criminal Investigation Command, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5506.

NOTIFICATION PROCEDURE:

Individual seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, ATTN: CICR–FP, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5585.

For verification purposes, individuals should provide the full name, date and place of birth, current address, telephone numbers, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, ATTN: CICR–FP, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060–5585.

For verification purposes, individuals should provide the full name, date and place of birth, current address, telephone numbers, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Suspects, witnesses, victims, USACIDC special agents and other personnel, informants; various Department of Defense, federal, state, and local investigative agencies; departments or agencies of foreign governments; and any other individual or organization which may supply pertinent information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is complied and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0600–37b DAPE

SYSTEM NAME:

Unfavorable Information Files (February 22, 1993, 58 FR 10002).

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 et seq.; Department of Defense Directive 1030.1, Victim and Witness Assistance; and Army Regulation 600–37, Unfavorable Information; and E.O. 9397 (SSN).''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph 'To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.'

* * * * *

A0600–37b DAPE

SYSTEM NAME:

Unfavorable Information Files.

SYSTEM LOCATION:

Primary records are located at the Department of the Army Suitability Evaluation Board, Office of the Deputy Chief of Staff of Personnel, 4000 Army Pentagon, Washington, DC 20310–4000. Segments of the system may exist as Suitability Evaluation Board at Major Army Commands. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army personnel (active, reserve, National Guard) on whom unfavorable information has been discovered, considered, referred to individual, and disposed of, to include appeals and petitions for removal or transfer of such information from the individual's performance record.

CATEGORIES OF RECORDS IN THE SYSTEM:

Summary of unfavorable information, copy of letter of notification to individual, individual's response or appeal, summary of consideration of response or appeal, disposition determination, and voting record of Board members.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 et seq.; Department of Defense Directive 1030.1, Victim and Witness Assistance; and Army Regulation 600–37, Unfavorable Information; and E.O. 9397 (SSN).

PURPOSE(S):

To record Board action and to provide pattern of subsequent unfavorable information. Information filed in the performance portion of the Official Military Personnel File is also used by Department of Army promotion/selection boards when the individual has been afforded due process.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records of information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel having official need therefor. Buildings housing records are secured at all times.

RETENTION AND DISPOSAL:

Records are retained by the Suitability Evaluation Board for 6 years, following which they are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, 4000 Army Pentagon, Washington, DC 20310–4000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves contained in this system should address written inquiries to the Deputy Chief of Staff for Personnel, Department of the Army, 4000 Army Pentagon, Washington, DC 20310–4000.

Inquirer should furnish his/her full name, Social Security Number, sufficient details concerning time and place of event to ensure locating pertinent records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written request to the Deputy chief of Staff for Personnel, Headquarters, Department of the Army, ATTN: DAPE–MPD, 4000 Army Pentagon, Washington, DC 20310–4000.

Inquirer should furnish his/her full name, Social Security Number, sufficient details concerning time and place of event to ensure locating pertinent records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 430–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; Suitability Evaluation Board proceedings.

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0635–200 TAPC

SYSTEM NAME:

Separations: Administrative Board Proceedings (April 2, 1999, 64 FR 15956).

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 1169, Regular enlisted members; limitations on discharge, 10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 *et seq.*; Department of Defense Directive 1030.1, Victim and Witness Assistance; and E.O. 9397 (SSN).''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph ''To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.''

A0635–200 TAPC

SYSTEM NAME:

Separations: Administrative Board Proceedings.

SYSTEM LOCATION:

U.S. Total Army Personnel Command, ATTN: TAPC–PDT–P, 200 Stovall Street, Alexandria, VA 22332–0478. Segments exist at Major Army Commands and subordinate commands, field operating agencies, and activities exercising general courts-martial jurisdiction. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members on whom allegations of defective enlistment/agreement/fraudulent entry/alcohol or other drug abuse rehabilitation failure/unsatisfactory performance/misconduct/homosexuality under the provisions of Chapters 7, 9, 13, 14, or 15 of Army Regulation 635–200, Enlisted Personnel, result in administrative board proceedings.

CATEGORIES OF RECORDS IN THE SYSTEM:

Notice to service member of allegations on which proposed separation from the Army is based; supporting documentation; DA Form 2627, Records of Proceedings under Article 15, UCMJ; DD Form 493, Extract of Military Records of Previous Convictions; medical evaluations; military occupational specialty evaluation and aptitude scores; member's statements, testimony, witness statements, affidavits, rights waiver record; hearing transcript; board findings and recommendations for separation or retention; final action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1169, Regular enlisted members; limitations on discharge, 10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 et seq.; Department of Defense Directive 1030.1, Victim and Witness Assistance; and E.O. 9397 (SSN).

PURPOSE(S):

Information is used by processing activities and the approval authority to determine if the member meets the requirements for retention or separation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By individual's surname or Social Security Number.

SAFEGUARDS:

Records are accessed only by designated persons having official need; in locked cabinets, in locked rooms within secure buildings.

RETENTION AND DISPOSAL:

The original of board proceedings becomes a permanent part of the member's Official Military Personnel Record. When separation is ordered, a copy is sent to member's commander where it is retained for two years before being destroyed. When separation is not ordered, board proceedings are filed at the headquarters of the separation authority for two years, then destroyed. A copy of board proceedings in cases where the final authority is the U.S. Total Army Personnel Command, pursuant to Army Regulation 635–200, is retained by that headquarters (TAPC–PDT) for one year following decision.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PDT–P, 200 Stovall Street, Alexandria, VA 22332–0478.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander of the installation where administrative board convened or to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PDT–P, 200 Stovall Street, Alexandria, VA 22332–0478.

Individual should provide the full name, details concerning the proposed or actual separation action to include location and date, and signature.

RECORD ACCESS PROCEDURES:

If individual has been separated from the Army, address written inquiries to the National Personnel Records Center, General Services Administration, 9700 Page Avenue, St. Louis, MO 63132–5200: proceedings will be part of the Official Military Personnel Record.

If member is on active duty, address written inquiries to the commander of the installation where administrative board convened.

Individual should provide the full name, details concerning the proposed or actual separation action to include location and date, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; individual's commander; Army personnel, medical, and/or investigative records; witnesses; the Administrative Separation Board; federal, state, local, and/or foreign law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0640–10a TAPC

SYSTEM NAME:

Military Personnel Records Jacket Files (MPRJ) (December 19, 1997, 62 FR 66606).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with ''A0600–8–104 TAPC''.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 et seq.; Department of Defense Directive 1030.1, Victim and Witness Assistance; Army Regulation 600–8–104, Military Personnel Information Management/Records; and E.O. 9397 (SSN).''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph ''To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.''

* * * * *

A0600–8–104 TAPC

SYSTEM NAME:

Military Personnel Records Jacket Files (MPRJ).

SYSTEM LOCATION:

Active and Reserve Army Commands/field operating agencies, installations, activities. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Enlisted, warrant and commissioned officers on active duty in the U.S. Army; enlisted, warrant and commissioned officers of the U.S. Army Reserve in active reserve (unit or non-unit) status; retired persons; commissioned/warrant officers separated after June 30, 1917 and enlisted personnel separated after October 31, 1912.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records reflecting qualifications, emergency data, enlistment and related service agreement/extension/active duty orders; military occupational specialty evaluation data; group life insurance election; record of induction; security questionnaire and clearance; transfer/discharge report/Certificate of Release or Discharge from Active Duty; language proficiency questionnaire; police record check; statement of personal history; application for ID; Department of Veterans Affairs compensation forms and related papers; dependent medical care statement and related forms; training and experience documents; survivor benefit plan election certificate; efficiency reports; application/nomination for assignment; achievement certificates; record of proceeding and appellate or other supplementary actions, Article 15 (10 U.S.C. 815); weight control records; personnel screening and evaluation records; application/prior service enlistment documents; certificate barring reenlistment; waivers for enlistment; physical evaluation board summaries; service record brief; Army School records; classification board proceedings; correspondence relating to badges, medals, and unit awards, including foreign decorations; correspondence/letters/administrative reprimands/censures/admonitions relating to apprehensions/confinement/discipline; dependent travel and movement of household goods; personal indebtedness correspondence and related papers; documents relating to proficiency pay, promotion, reduction in grade, release, retirement (includes documents pertaining to pre-separation and job assistance needs in transition from military to civilian life), temporary duty individual flight records, physical examination records, aviator flight record, instrument certification papers, duty status, leave, and similar military documents prescribed for filing by Army regulations or directives.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 *et seq.;* Department of Defense Directive 1030.1, Victim and Witness Assistance; Army Regulation 600–8–104, Military Personnel Information Management/Records; and E.O. 9397 (SSN).

PURPOSE(S):

Personnel records are created and maintained to manage the member's Army Service effectively, document historically the member's military service, and safeguard the rights of the member and the Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of State to issue passport/visa; to document persona-non-grata status, attache assignments, and related administration of personnel assigned and performing duty with the Department of State.

To the Department of Treasury to issue bonds; to collect and record income taxes.

To the Department of Justice to file fingerprints to perform investigative and judicial functions.

To the Department of Agriculture to coordinate matters related to its advanced education program.

To the Department of Labor to accomplish actions required under Federal Employees Compensation Act.

To the Department of Health and Human Services to provide services authorized by medical, health, and related functions authorized by 10 U.S.C. 1074 through 1079.

To the Nuclear Regulatory Commission to accomplish requirements incident to Nuclear Accident/Incident Control Officer functions.

To the American Red Cross to accomplish coordination and service functions including blood donor programs and emergency investigative support and notifications.

To the Civil Aeronautics Board to accomplish flight qualifications, certification and licensing actions.

To the Federal Aviation Agency to determine rating and certification (including medical) of in-service aviators.

To the General Services Administration for records storage and archival services and for printing of directories and related material which includes personal data.

To the U.S. Postal Service to accomplish postal service authorization involving postal officers and mail clerk authorizations.

To the Department of Veterans Affairs to provide information relating to service, benefits, pensions, in-service loans, insurance, and appropriate hospital support.

To the Bureau of Immigration and Naturalization to comply with status relating to alien registration, and annual residence/location.

To the Office of the President of the United States of America to exchange required information relating to White House Fellows, regular Army promotions, aides, and related support functions staffed by Army members.

To the Federal Maritime Commission to obtain licenses for military members accredited as captain, mate, and harbor master for duty as Transportation Corps warrant officer.

To each of the several states, and U.S. possessions to support state bonus application; to fulfill income tax requirements appropriate to the service member's home of record; to record name changes in state bureaus of vital statistics; and for National Guard affairs.

Civilian educational and training institutions to accomplish student registration, tuition support, tests, and related requirements incident to in-service education programs in compliance with 10 U.S.C. chapters 102 and 103.

To the Social Security Administration to obtain or verify Social Security Number; to transmit Federal Insurance Compensation Act deductions made from members' wages.

To the Department of Transportation to coordinate and exchange necessary information pertaining to inter-service relationships between U.S. Coast Guard (USCG) and U.S. Army when service members perform duty with the USCG.

To the Civil authorities for compliance with 10 U.S.C. 814.

To the U.S. Information Agency to investigate applicants for sensitive positions pursuant to E.O. 10450.

To the Federal Emergency Management to facilitate participation of Army members in civil defense

planning, training, and emergency operations pursuant to the military support of civil defense as prescribed in DoD Directive 3025.10, Military Support of Civil Defense, and Army Regulation 500–70, Military Support of Civil Defense.

To the Director of Selective Service System to Report of Non-registration at Time of Separation Processing, of individuals who decline to register with Selective Service System. Such report will contain name of individual, date of birth, Social Security Number, and mailing address at time of separation.

Other elements of the Federal Government pursuant to their respective authority and responsibility.

To the Military Banking Facilities Overseas. Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

Note: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directed or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices do not apply to these categories of records.

County and city welfare organizations to provide information needed to consider applications for benefits.

Penal institutions to provide health information to aid patient care.

State, county, and city officials to include law enforcement authorities to provide information to determine benefits or liabilities, or for the investigation of claim or crimes.

Patriotic societies incorporated, pursuant to 36 U.S.C., in consonance with their respective corporate missions when used to further the welfare, morale, or mission of the soldier. Information can only be disclosed only if the agency which receives it adequately prevents its disclosure to persons other than their employees who need such information to perform their authorized duties.

To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system, except for those specifically excluded categories of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's name and/or Social Security Number.

SAFEGUARDS:

All records are maintained in secured areas, accessible only to designated individuals whose official duties require access; they are transferred from station to station in personal possession of the individual whose record it is or, when this is not feasible, by U.S. Postal Service.

RETENTION AND DISPOSAL:

The maintenance, forwarding, and disposition of the MPRJ (DA Form 201) and its contents are governed by Army Regulations 600–8–104, Military Personnel Information Management/ Records and 635–10, Processing Personnel for Separations.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander of the organization to which the service member is assigned; for retired and non-unit reserve personnel, information may be obtained from the U.S. Army Reserve Personnel Center, 9700 Page Avenue, St Louis, MO 63132–5200; for discharged and deceased personnel contact the National Personnel Records Center, General Services Administration, 9700 Page Boulevard, St Louis, MO 63132–5100.

Individual should provide the full name, Social Security Number, service identification number, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the commander of the organization to which the service member is assigned; for retired and non-unit reserve personnel, information may be obtained from the U.S. Army Reserve Personnel Center, 9700 Page Avenue, St. Louis, MO 63132–5200; for discharged and deceased personnel contact the National Personnel Records Center, General Services Administration, 9700 Page Boulevard, St Louis, MO 63132–5100.

Individual should provide the full name, Social Security Number, service identification number, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, educational and financial institutions, law enforcement agencies, personal references provided by the individual, Army records and reports, third parties when information furnished relates to the service member's status.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–31243 Filed 12–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter systems of records.

SUMMARY: The Department of the Army is altering three systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 8, 2001 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on November 27, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 30, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0020–1a SAIG

SYSTEM NAME:

Inspector General Investigation Files (May 11, 1999, 64 FR 25308).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph ''To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim Witness Assistance Program, regarding the investigation and disposition of an offense.''

* * * * *

A0020–1aa SAIG

SYSTEM NAME:

Inspector General Investigation Files.

SYSTEM LOCATION:

Primary location: Office of the U.S. Army Inspector General Agency, Headquarters, Department of the Army, 1700 Army Pentagon, Washington, DC 20310–1700.

Secondary location: Offices of Inspector General at major Army commands, field operating agencies, installations and activities, Army-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual, military or civilian, against whom allegations of wrongdoing have been made related to violations of laws, rules, or regulations or to mismanagement, gross waste of funds, or abuse of authority, that have been reviewed or investigated.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigation case files containing investigative reports, such as, preliminary inquiries and Reports of Investigation (ROIs), and administrative documents; and computer indices. ROIs include the authority for the inquiry/investigation, matters investigate, narrative, summaries/excerpts of testimony given by witnesses and appended exhibits that may include supporting documents, documentary evidence, summaries of interviews or transcripts of verbatim testimony, or other investigative information from Federal, State, and local investigative agencies and departments. Administrative documents in the files include those that guide or facilitate inquiry/investigative activities in the cases and provide the opening, transfer, or closing data for the cases. Computerized indices contain the names/subjects of the inquiry/investigation, opening and closing dates, codes for the type of allegations and their disposition, brief summaries of allegations, case notes, locations of the inquiries/investigations and the assigned case numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 3014; 10 U.S.C. 3020; 10 U.S.C. 3065(a); Inspector General Act of 1978 (Pub L. 95–452), as amended; 42 U.S.C. 10606 et seq., Victims Rights; Department of Defense Directive 1030.1, Victim and Witness Assistance.

PURPOSE(S):

To review and conduct non-criminal law enforcement inquiries/investigations into allegations of wrongdoing by Army personnel related to violations of laws, rules, or regulations or to mismanagement, gross waste of funds, or abuse of authority and report the results to the Office of the Secretary of Defense, the Department of Defense Inspector General, Office of the Secretary of the Army and Army officials, and to commanders so they may discharge their responsibilities under the Inspector General Act of 1978 for maintaining discipline, law, and order.

To provide detailed information necessary for the Secretary of Defense and Secretary of the Army, Army officials and commanders to direct further investigation, effect corrective personnel or other administrative action; to provide facts and evidence upon which to base prosecution; to provide information to other investigative elements of the Army, Department of Defense, other Federal, State, or local agencies having jurisdiction over the substance of the allegations or a related investigative interest; to provide information upon which determinations may be made for individuals' suitability for various personnel actions including but not limited to retention, promotion, assignment, retirement in grade or selection for sensitive or critical positions in the Armed Forces or Federal service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; electronic storage media; CD–ROM.

RETRIEVABILITY:

By individual's full name and/or other descriptive information cross-referenced to the case number.

SAFEGUARDS:

Access is limited to authorized individuals having need for the records

in the performance of their official duties. Paper files and CD–ROMs are stored in containers with locks, located in a locked room, in a secured building with controlled access. Computer indices are secured in locked rooms with limited/controlled access. Access to computerized information is controlled by a system of assigned passwords and available only to personnel responsible for system operation and maintenance.

RETENTION AND DISPOSAL:

Office of The Inspector General primary location of inquiry/investigative case files that contain allegations, that attract high public and/or Congressional Committee or Sub-Committee interest, or that are deemed to be historical significance by the Inspector General, are retained for 30 years, except that they may be offered to the National Archives after 25 years. Paper files are transferred to a Federal Records Center 2 years after completion of the inquiries/investigations and destroyed by burning upon completion of the transfer. The case files on CD–ROMs are erased by media being physically destroyed, unless retained permanently by the National Archives. Paper files of closed inquiry/investigative cases held by the secondary location Offices of The Inspector General are retained for up to 3 years, at the conclusion of which they are forwarded to the Office of The Inspector General system manager for optical scanning and retention as stated above.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Investigations Division, Office of the Inspector General, Headquarters, Department of the Army, 1700 Army Pentagon, Washington, DC 20310–1700.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this system should address written inquiries to the Office of the Inspector General, Headquarters, Department of the Army, ATTN: Records Release Office, 1700 Army Pentagon, Washington, DC 20310–1700.

Individual should provide the full name, home address, telephone numbers and Army unit or activity to which assigned at the time of any Army Inspector General investigation, and a free statement. Requests submitted on behalf of other persons must include their written, notarized or certified authorization.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this system should address written inquiries to the Office of the Inspector General, Headquarters, Department of the Army, ATTN: Records Release Office, 1700 Army Pentagon, Washington, DC 20310–1700.

Individual should provide the full name, home address, telephone numbers and Army unit or activity to which assigned at the time of any Army Inspector General investigation, and a fee statement. Requests submitted on behalf of other persons must include their written, notarized or certified authorization.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports, and other sources providing or containing pertinent information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material complied for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material complied solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) published in 32 CFR part 505. For additional information contact the system manager.

A0027–10a DAJA

SYSTEM NAME:

Prosecutorial Files (February 22, 1993, 58 FR 10002).

CHANGES:

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Any individual who is the subject of a military justice investigation, a Court or Board of Inquiry, other administrative or disciplinary hearing, or pending trial by courts-material.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to the entry ''convening orders; appointment orders; investigative reports of federal, state, and local law enforcement agencies; local command investigations; immunity requests; search authorizations; general correspondence; legal research and memorandum; motions; forensic reports; pretrial confinement orders; personal, financial, and medical records; report of Article 32, UCMJ investigations; subpoenas; discovery requests; correspondence reflecting pretrial negotiations; requests for resignation or discharge in lieu of trail by court-martial; work product of trial counsel; results of trial memoranda; and forms to comply with the Victim and Witness Assistance Program, the Sexual Assault Prevention and Response Program and the Victim's Rights and Restitution Act of 1990.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 *et seq.,* Victims' Rights; Department of Defense Directive 1030.1, Victim and Witness Assistance; and Army Regulation 27–10, Military Justice.''

PURPOSE(S):

Change to ''To prosecute or otherwise resolve military justice cases; to obtain information and assistance from federal, state, local, foreign agencies, or from individuals or organizations relating to investigation, allegation of criminal misconduct, or court-material; and to provide information and support to victims and witnesses in compliance with Victim and Witness Assistance Statutes and regulations.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Add two new paragraphs ''To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

To attorney licensing and/or disciplinary authorities as required to support professional responsibility investigations and proceedings.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Information in the system is both classified and unclassified and located in file cabinets in the trial counsel's office or other offices in the Criminal Law section of the Staff Judge Advocate offices. Classified information is stored in locked safe drawers with the proper security measures applicable. Unclassified information is located in file cabinets accessible only to authorized personnel who are properly instructed in the permissible use of the information. Some file cabinets have locking capabilities. Automated files are password protected.

Offices are locked during non-work hours. The files are not accessible to the public or to persons within the command without an official need to know.''

* * * * *

RECORD SOURCE CATEGORIES:

Add ''Court-martial, Article 32; UCMJ investigations; convening authority; Federal, state, and local law enforcement agencies; witness interviews; personnel, financial, and medical records; medical facilities; financial institutions; information provided by the defense/accused; and the work-product of trial counsel and other individuals assisting them on a particular case.''

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A0027–10a DAJA

SYSTEM NAME:

Prosecutorial Files.

SYSTEM LOCATION:

Decentralized at Staff Judge Advocate Offices. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who is the subject of a military justice investigation, a Court or Board of Inquiry, other administrative or disciplinary hearing, or pending trial by courts-martial.

CATEGORIES OF RECORDS IN THE SYSTEM:

Witness statements; pretrial advice; documentary evidence; exhibits, evidence of previous convictions; personnel records; recommendations as to the disposition of the charges; explanation of any unusual features of the case; charge sheet; and criminal investigation reports; convening orders; appointment orders; investigative reports of federal, state, and local law enforcement agencies; local command investigations; immunity requests; search authorizations; general correspondence; legal research and memoranda; motions; forensic reports; pretrial confinement orders; personal, financial, and medical records; report of Article 32, UCMJ investigations; subpoenas; discovery requests; correspondence reflecting pretrial negotiations; requests for resignation or discharge in lieu of trial by court-martial; work product of trial counsel; results of trial memoranda; and forms to comply with the Victim and Witness Assistance Program, the Sexual Assault Prevention and Response Program and the Victim's Rights and Restitution Act of 1990.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 *et seq.*, Victims' Rights; Department of Defense Directive 1030.1, Victim and Witness Assistance; and Army Regulation 27–10, Military Justice.

PURPOSE(S):

To prosecute or otherwise resolve military justice cases; to obtain information and assistance from federal, state, local, or foreign agencies, or from individuals or organizations relating to an investigation, allegation of criminal misconduct, or court-martial; and to provide information and support to victims and witnesses in compliance with Victim and Witness Assistance Statutes and regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from this system of records may be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

To attorney licensing and/or disciplinary authorities as required to support professional responsibility investigations and proceedings.

The DoD ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Retrieved by individual's surname.

SAFEGUARDS:

Information in the system is both classified and unclassified and located in file cabinets in the trial counsel's office or other offices in the Criminal Law section of the Staff Judge Advocate offices. Classified information is stored in locked safe drawers with the proper security measures applicable. Unclassified information is located file cabinets accessible only to authorized personnel who are properly instructed in the permissible use of the information. Some file cabinets have locking capabilities. Automated filed are password protected. Offices are locked during non-work hours. The files are not accessible to the public or to persons within the command without an official need to know.

RETENTION AND DISPOSAL:

Records are destroyed two years after final review/appellate action.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Criminal Law Division, Office of the Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Criminal Law Division, Office of the Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200.

Individual should provide his/her full name, current address and telephone number, case number and office symbol of Army element which furnished correspondence to the individual, other personnel identifying data that would assist in locating the records. The inquiry must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Criminal Law Division, Office of the Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200.

Individual should provide his/her full name, current address and telephone number, case number and office symbol of Army element which furnished

correspondence to the individual, other personal identifying data that would assist in locating the records. The inquiry must be signed.

CONTESTING RECORD PROCEDURE:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From official Army records and reports, investigative documents, law enforcement agencies; Court-martial, Article 32; UCMJ investigations; convening authority; Federal, state, and local law enforcement agencies; witness interviews; personnel, financial, and medical records; medical facilities; financial institutions; information provided by the defense/accused; and the work-product of trail counsel and other individuals assisting them on a particular case.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

A0027–10b DAJA

SYSTEM NAME:

Courts-Martial Files (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Courts-Martial Records and Reviews'.

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals having appeared as an accused before a courts-martial.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry '10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 et seq.; Department of Defense Directive 1030.1, Victim and Witness Assistance; 10 U.S.C. 3037, Judge Advocate General; and Army Regulation 27–10b, Military Justice.'

PURPOSE(S):

Delete entry and replace with 'The purpose of this system is to satisfy statutory requirements of Chapter 47 of title 10, United States Code, for maintaining records of trial of courts-martial proceedings to complete appellate review, to determine whether clemency is warranted, to answer inquires concerning the state of particular cases, to develop statistical data to guide individuals responsible for making policy decisions regarding military justice activities, to serve as a central repository of Army courts-martial records, and for related purposes.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph 'To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'With respect to each courts-martial, there is an original record and from 1 to 5 copies. One copy is given to the accused and the remaining copies are used in the review of the case for legal sufficiency. The original record is disposed of as follows: All records of trial by general courts-martial and those special courts-martial records in which a bad-conduct discharge (BCD) was approved are retained in the Office of the Clerk of Court, U.S. Army Legal Service Agency, 901 North Stuart Street, Suite 1200, Arlington, VA 22203–1837, for 1–2 years after completion of appellate review. Thereafter, the records are forwarded to the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001 for permanent storage.

Records of trial by special courts-martial (non-BCD) and summary courts-martial are retained in the staff judge advocate office of the general courts-martial authority for 1 year after completion of supervisory review. Thereafter the records are held for 2 years in the record holding area or overseas records center. Records are then sent to National Personnel Records Center (Military Records), 9700 Page Avenue, St. Louis, MO 63132–5200, where they are retained for 7 years. Thereafter, the records are destroyed and the remaining evidence of conviction is the special (non-BCD) and summary courts-martial promulgating orders maintained in the individual's permanent records and any review(s) of the cases conducted pursuant to Articles 69 or 73, UCMJ.

The original reviews of special (non-BCD) and summary courts-martial cases and a copy of all other reviews pursuant to Articles 69 or 73, UCMJ are maintained for 3 years in the Office of the Chief, Examination and New Trials Division, U.S. Army Legal Services Agency, 901 N. Stuart Street, Suite 1200, Arlington, VA 22203–1837. They are retained an additional 7 years at the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001, and destroyed.

Pre-decisional legal reviews pursuant to Articles 69 or 73, UCMJ are maintained for 3 years in the Office of the Chief, Examination and New Trials, U.S. Army Legal Services Agency, 901 North Stuart Street, Arlington, VA 22203–1837 or at the office of the Judge Advocate General, Criminal Law Division, Department of the Army, Washington, DC 20310–2200. They are retained an additional 7 years at the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001 and destroyed.

Courts-martial index cards from 1900–1986 are permanently stored at the Office of Clerk of Court, U.S. Army Legal Services Agency, 901 North Stuart Street, Suite 1200, Arlington, VA 22203–1837. Arranged alphabetically by name of the accused, they identify the docket number and accession information for permanent records of trial. Since mid-July 1986, courts-martial information is accessible by computer database.'

* * * * *

A0027–10b DAJA

SYSTEM NAME:

Courts-Martial Records and Reviews.

SYSTEM LOCATION:

Clerk of Court, U.S. Army Legal Services Agency, 901 North Stuart Street, Suite 1200, Arlington, VA 22203–1837; Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001; National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5200; and Office of the Judge Advocate General, Criminal Law Division, Department of the Army, Washington, DC 20310–2200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals having appeared as an accused before a courts-martial.

CATEGORIES OF RECORDS IN THE SYSTEM:

Certain general and all special bad conduct discharge (BCD) courts-martial records of trial that include a verbatim transcript of the trial and allied papers relating to the charged offenses and legal review of the case. General courts-martial examined pursuant to Article 69 and special non-bad conduct discharge (non-BCD) and summary courts-martial records of trial may include only a summarized transcript of the trial as well as allied papers relating to the charged offenses, but do not necessarily include all records of review pursuant to Articles 69 or 73, Uniform Code of Military Justice. Pre-decisional legal reviews pursuant to Articles 69 and 73 are separately maintained in this system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 801–940 (Uniform Code of Military Justice); 10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 et seq.; Department of Defense Directive 1030.1, Victim and Witness Assistance; 10 U.S.C. 3037, Judge Advocate General; Army Regulation 27–10b, Military Justice; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of this system is to satisfy statutory requirements of Chapter 47 of title 10, United States Code, for maintaining records of trial of courts-martial proceedings to complete appellate review, to determine whether clemency is warranted, to answer inquiries concerning the state of particular cases, to develop statistical data to guide individuals responsible for making policy decisions regarding military justice activities, to serve as a central repository of Army courts-martial records, and for related purposes

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Courts-martial records reflect criminal proceedings ordinarily open to the public; therefore, they are normally releasable to the public pursuant to the Freedom of Information Act.

Information from these records may be disclosed to the Department of Justice, the Department of Veterans Affairs, and federal, state, and local law enforcement agencies for determination of rights and entitlements of the individuals concerned and for use in the enforcement of criminal or civil law.

Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

To victims and witnesses of a crime for purposes of providing information, consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Papers in file folders; index cards; electronic storage medium; courts-martial coding sheets; and on a computer database (Army Courts-Martial Management Information System).

RETRIEVABILITY:

By individual's name and Social Security number, by court-martial number assigned to the case.

SAFEGUARDS:

All records are protected by systems of personnel screening, cipher locks, and hand receipts. During non-duty hours, military police or contract guard patrols ensure protection against unauthorized access. Access to hard disk is controlled by password and is restricted to personnel having a need to know.

RETENTION AND DISPOSAL:

With respect to each courts-martial, there is an original record and from 1 to 5 copies. One copy is given to the accused and the remaining copies are used in the review of the case for legal sufficiency. The original record is disposed of as follows:

All records of trial by general courts-martial and those special courts-martial records in which a bad-conduct discharge (BCD) was approved are retained in the Office of the Clerk of Court, U.S. Army Legal Service Agency, 901 North Stuart Street, Suite 1200, Arlington, VA 22203–1837, for 1–2 years after completion of appellate review. Thereafter, the records are forwarded to the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001 for permanent storage.

Records of trial by special courts-martial (non-BCD) and summary courts-martial are retained in the staff judge advocate office of the general courts-martial authority for 1 year after completion of supervisory review. Thereafter the records are held for 2 years in the record holding area or overseas records center. Records are then sent to National Personnel Records (Military Records), 9700 Page Avenue, St. Louis, MO 63132–5200, where they are retained for 7 years. Thereafter, the records are destroyed and the remaining evidence of conviction is the special (non-BCD) and summary courts-martial promulgating order maintained in the individual's permanent records and any review(s) of the cases conducted pursuant to Articles 69 or 73, UCMJ.

The original reviews of special (non-BCD) and summary courts-martial cases and a copy of all other reviews pursuant to Articles 69 or 73, UCMJ are maintained for 3 years in the Office of the Chief, Examination and New Trails Division, U.S. Army Legal Services Agency 901 N. Stuart Street, Suite 1200, Arlington, VA 22203–1837. They are retained an additional 7 years at the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001, and destroyed.

Pre-decisional legal reviews pursuant to Articles 69 or 73, UCMJ are maintained for 3 years in the Office of the Chief, Examination and New Trials, U.S. Army Legal Services Agency, 901 North Stuart Street, Arlington, VA 22203–1837 or at the office of the Judge Advocate General, Criminal Law Division, Department of the Army, Washington, DC 20310–2200. They are retained an additional 7 years at the Washington National Records Center, 4205 Suitland Road, Suitland, MD 20746–8001 and destroyed.

Courts-martial index cards from 1900–1986 are permanently stored at the Office of Clerk of Court, U.S. Army Legal Services Agency, 901 North Stuart Street, Suit 1200, Arlington, VA 22203–1837. Arranged alphabetically by name of the accused, they identify the docket number and accession information for permanent records of trial. Since mid-July 1986, courts-martial information is accessible by computer database.

SYSTEM MANAGER(S) AND ADDRESS:

Clerk of Court, U.S. Army Legal Services Agency, 901 North Stuart Street, Suite 1200, Arlington, VA 22203–1837.

NOTIFICATION PROCEDURE:

Requests from individuals as to whether there are any general or special bad conduct discharge (BCD) courts-

martial records in the system pertaining to them should be addressed to the Clerk of Court, U.S. Army Legal Services Agency, 901 N. Stuart Street, Suite 1200, Arlington, VA 22203–1837.

Requests for information as to special non bad conduct discharge (non-BCD) and summary courts-martial records should be addressed to the staff judge advocate of the command where the record was reviewed or, if no longer there, to the National Personnel Records Center (Military Records), 9700 Page Avenue, St. Louis, MO 63132–5200.

Requests for information concerning reviews pursuant to Articles 69 or 73, UCMJ, should be addressed to the Office of the Chief, Examination and New Trails Division, U.S. Army Legal Services Agency, 901 N. Stuart Street, Suite 1200, Arlington, VA 22203–1837. Written requests should include individual's full name, Social Security Number, the record file number if available, and any other personal information which would assist in locating the records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquires to the Clerk of the Court, U.S. Army Legal Services Agency, 901 N. Stuart Street, Suite 1200, Arlington, VA 22203–1837, if the type of courts-martial or reviewing command is unknown.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information from almost any source may be included in the record if it is relevant and material to courts-martial proceedings.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principal function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 00–31244 Filed 12–7–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Availability of Exclusive or Partially Exclusive Licenses

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: The Department of the Army, U.S. Army Corps of Engineers, announces the general availability of exclusive, or partially exclusive licenses under the following patents. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR Part 404.

Patent Number: 5,849,984
Title: Method and System for Treating Waste Nitrocellulose
Issue Date: 12/15/98

Patent Number: 5,858,082
Title: Self-Interlocking Reinforcement Fibers
Issue Date: 1/12/99

Patent Number: 5,861,756
Title: Method of Detecting Accretion of Frazil Ice on Water
Issue Date: 1/19/99

Patent Number: 5,863,483
Title: Shock-Absorbing Block
Issue Date: 1/26/99

Patent Number: 5,864,059
Title: Self-Recording Snow Depth Probe
Issue Date: 1/26/99

Patent Number: 5,865,439
Title: Pop-Up Target System
Issue Date: 2/2/99

Patent Number: 5,888,559
Title: Press for Compacting Plastic Explosive Material
Issue Date: 3/30/99

Patent Number: 5,890,836
Title: Interlocking Blocks for Stream Erosion Control
Issue Date: 4/6/99

Patent Number: 5,900,820
Title: System and Method for Detection of Frazil Ice on Underwater Grating
Issue Date: 5/4/99

Patent Number: 5,902,939
Title: Penetrometer Sampler System for Subsurface Spectral Analysis of Contaminated Media
Issue Date: 5/11/99

Patent Number: 5,913,179
Title: Method for Spatial and Temporal Analysis of Nested Graphical Data
Issue Date: 6/15/99

Patent Number: 5,995,451
Title: Multiple Sensor Fish Surrogate Interface System for Acoustic and Hydraulic Data Collection and Analysis
Issue Date: 11/30/99

Patent Number: 6,003,251
Title: Debris Separator for Dredge or Slurry Pump
Issue Date: 12/21/99

Patent Number: 6,032,538
Title: Pressure Sensor Mounting Device for High Temperature Environments
Issue Date: 3/7/00

Patent Number: 6,047,782
Title: Assembly and Method for Extracting Discrete Soil Samples
Issue Date: 4/11/00

Patent Number: 6,053,479
Title: Self-Aligning Vortex Snow Fence
Issue Date: 4/25/00

Patent Number: 6,064,760
Title: Method for Rigorous Reshaping of Stereo Imagery with Digital Photogrammetric Workstation
Issue Date: 5/16/00

Patent Number: 6,084,393
Title: Scour Probe Assembly
Issue Date: 7/4/00

Patent Number: 6,095,052
Title: Corrosion Resistant Metal Body, Bullet Blank, and Bullet and Method for Making Same
Issue Date: 8/1/00

Patent Number: 6,104,298
Title: Roof Moisture Detection Assembly
Issue Date: 8/15/00

Patent Number: 6,109,486
Title: Dry Sand Pluviation Device
Issue Date: 8/29/00

Patent Number: 6,116,353
Title: Method and Apparatus for Installing a Micro-Well with a Penetrometer
Issue Date: 9/12/00

ADDRESSES: Humphreys Engineer Center Support Activity, Office of Counsel, 7701 Telegraph Road, Alexandria, Virginia 22315–3860.

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice. However, no exclusive or partially exclusive license shall be granted until 90 days from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Patricia L. Howland (703) 428–6672 or Alease J. Berry, (703) 428–8160.

SUPPLEMENTARY INFORMATION: USP 5,849,984—A method for treating waste nitrocellulose, the method comprising the steps of treating nitrocellulose with acid in a hydrolysis process to break the nitrocellulose down to glucose, recovering a majority of the acid by electrodyialysis, neutralizing a remainder of the acid, and fermenting

the glucose to convert the glucose to a useful product. The invention further comprises a system for performing the above method.

USP 5,858,082—The invention's first embodiment of uses shape memory alloy (SMA) fibers that are blended into a concrete composite material as straight fibers and are made to deform themselves and anchor and interlock themselves after dispersement in the composite material resulting in a more evenly distributed and interlocked fiber reinforcement of the cementitious material. A self-shaping fiber can be imparted to the concrete material by making the fibers out of SMA such as nickel-titanium alloy known as nitinol where the cementitious composite material mixture is briefly heated above the ''transition'' temperature prior to hardening that causes the fibers to change shape. Nitinol fibers are used alone in place of conventional steel fibers. A second embodiment uses conventional coiled metal steel fiber combined with a SMA clip for retaining the coiled metal fiber during the blending of this clipped fiber into a cementitious material with required heating yielding a shape change of the coiled metal fibers ultimately resulting in improved reinforcement characteristics.

USP 5,861,756—The spaced plates of a capacitor are immersed in water adjacent water intake grating so that water flowing toward the grating passes between and in contact with the plates so that frazil ice may accrete on the facing surfaces of the plates. As accretion occurs, the capacitance changes to indicate the amount of accretion of frazil ice which is detected thereby providing an indication of the amount of accretion of frazil ice on the grating.

USP 5,863,483—Shock-absorbing blocks for bullet stops at firing ranges and for traffic control are made by encasing scrap rubber tires in concrete. To ensure firm attachment of the tires to the concrete, reinforcements such as wire loops are fastened to the tire. To prevent the formation of air pockets during the pouring of the concrete mixture into a mold holding the tire, vent holes are punched into the side walls of the tire. To allow the concrete mixture to flow under the tire in the mold, the tire is propped up with support blocks. Wires may be strung across the top of the tire and attached to the side walls of the mold to prevent movement of the tire while the concrete is being poured into the mold. The concrete mixture may contain an aqueous foam additive, a stabilizer, and fiber reinforcements such as steel or organic polymers.

USP 5,864,059—A snow probe device with a portable data logger that measures snow depths in snow covered areas. The snow probe components include: (i) A linear displacement magnetostrictive transducer composed of a long probe shaft with an internal magnetostrictive transducer filament that operates in conjunction with a small electronics package for signal generation and detection; (ii) a floating plate assembly that includes a magnet that slides on the probe shaft along with a floating plate that rests upon the snow's surface during a measurement event; (iii) a pointed tip designed for easy penetration of snow attached at the probe's bottom end portion; (iv) a thumb switch for actuating measurements on a cylindrical handle attached at the upper end of the probe shaft; and (v) a data logger for controlling and recording the magnetostrictive transducer measurements. Optionally, the device can include a polar fleece sleeve to thermally insulate the transducer's electronics package and a digital counter to record the number of measurements performed.

USP 5,865,439—The invention is a pop-up target system wherein a three-dimensional target is raised by a knee-like action. The target may take the form of a head and torso manufactured in two parts, a front half and a back half, which are hinged at the top of the head portion and may incorporate a thick, relatively massive material which will absorb incoming bullets. The bases of the torso halves are each mounted through hinges to two separate four-wheeled platforms or trucks which are constrained by tracks or guide cables to move linearly to move the bases of the torso halves together in an upright position or apart in a flat horizontal position. The linear relative position of the torso halves is controlled by linear moving means attached to the wheeled platforms or trucks such that at the maximum separation between the torso halves, the two halves of the target lays inclined on a brace so as to be out of horizontal alignment, preferably 5 to 10 degrees out of alignment. The slight inclination with the hinge at the head portion of the target elevated above the base assures that any lateral force will fold the two halves at the hinge rather than directing the force across two aligned members attached with a hinge.

USP 5,888,559—A press for compacting plastic explosive materials comprises a base plate, a support column upstanding from the base plate, a tubular housing mounted on an upper end of the column and extending widthwise of the column, a slide member slidably moveable in the tubular housing substantially parallel to the base plate and an elongated handle pivotally mounted at a distal end thereof on the slide member. A press piston is slidably disposed in a bore in the slide member and is slidably moveable in directions normal to the slide member, a distal end of the piston being disposed over the base plate, the piston having at a proximal end thereof a handle housing through which extends the handle, the handle housing having first and second rollers therein with the handle disposed between the rollers. Pivotal movement of the handle is operative to move the piston reciprocally toward and away from the base plate.

USP 5,890,836—Interlocking blocks for the stabilization of stream and river banks and coast lines, road bed embankments, and boat ramps, are made of concrete, and have a high proportion of open area. Interlocking connections between adjacent blocks are made by radial projecting members and recesses on the periphery of each block, the projecting members of one block fitting into the recesses on adjacent blocks. Projections and recesses are alternately provided at regular angular intervals such that blocks can be assembled in either square or an equilateral triangular patterns. A layer of filter cloth material is laid on the sloping surface and upon which the blocks are then placed; this filter cloth slows down the leaching of water through the open areas between the interlocking blocks and prevents the washing away of sand and silt by stream or river water or rainwater runoff.

USP 5,900,820—A system for detecting accretion of frazil ice on underwater gratings includes a housing for disposition beneath a water surface and spaced from but proximate an underwater intake grating. A pair of parallel electrically conducive bars are mounted side-by-side in the housing and extend therefrom. The bars are in communication with an electromagnetic wave generator in the housing. A coaxial transmission line is connected at a first end to the housing and in communication with the pair of bars for extension from the housing upwardly above the water surface. A monitoring station is disposed above the water surface for receiving signals from the bars, the monitoring station having a second end of the transmission line fixed thereto. The wave generator propagates electromagnetic waves to the bars for further travel to distal ends of the bars, and back to the housing and thence to the monitoring station. The

monitoring station is adapted to compute wave round trip travel time in the bars and to compute changes in the round trip travel time, from which is determined absence, presence, and build-up of frazil ice on the bars, thereby providing an indication of same on the grating.

USP 5,902,939—The present invention pertains to a direct push small diameter fluorescence based penetrometer system for performing in situ spectral analysis on subsurface liquid or gaseous samples. The invention is configured to collect liquid or gaseous analyte samples within the penetrometer's sample chamber through a port that is juxtaposed to a heating element that accelerates the separation of volatile chemical materials from the soil matrix. Fiber optic cables are linked to surface mounted real-time data acquisition/processing equipment from the sample chamber. The penetrometer sampling device is also equipped with a standard penetrometer electric cone sensor module containing cone and sleeve strain sensors that are used to calculate soil classification/layering in real-time during penetration. The invention integrates soil classification/layering data with spectral signature data of suspect subsurface liquid or gaseous fluids for assessing whether the subsurface soil and ground water regions are contaminated without the requirement of transporting the sample and/or analyte to the surface for analysis. Moreover, the system integrates a means for grouting the bore hole upon retrieval of the penetrometer.

USP 5,913,179—A computer implemented method for analyzing data utilizes a program and computer for processing input data in the form of digitized map representing a physical structure. The microprocessor performs the steps and stores the results of the steps in an attached storage device. The computer is programmed to employ or use various linear scales to establish critical dimensions of the curve and to analyze the dimensions in terms of orthogonal components. These are also stored for later processing or analysis to predict physical behavior associated with the structure. In a particular embodiment the curve represents a river bottom and predictions may be made about flows and the like.

USP 5,995,451—The invention is a processor based analysis system with appropriate interface that includes multiple fish surrogates that each have a plurality of piezoelectric and triaxial accelerometer sensors for emulating sensory organs of a particular fish. The multiple fish surrogate array is immersed in flowing water intakes of hydraulic structures such as intakes, intake bypasses, and diversion structures, and natural geological formation such as riffles, shoal areas, and pools. The invention is an interface system for data acquisition analysis and perspective display of acoustic and fluid dynamic data in or near these hydraulic structures and/or natural formations. To accomplish this, multiple sensors in each of the fish-shaped surrogate physical enclosures that form the array are deployed at the same time to describe a fish's aquatic environment at the hydraulic structure location. The gathered data can then be correlated with fish behavior for the purpose of developing methods of diverting fish from such areas of danger of a water intake or to attract them to a water bypass entrance system.

USP 6,003,251—A debris separator for a dredge pump includes a body portion having a top wall, bottom wall, first and second side walls, and an aft end wall defining a separator outlet for connection to the pump, a funnel portion having an entry end defining a separator inlet and a larger discharge end fixed to a forward inlet end of the body portion. The separator further includes a door hingedly mounted on the body portion first side wall and spring biased to a closed position overlying an opening in the first side wall, and a floor in the body portion slanted toward the bottom wall and toward the first side wall opening. Thus, upon stopping of the pump, backpressure is generated in the body by backflow of water into the separator. Backpressure causes the hinged side door to open. Heavy objects which have fallen to the slanted floor, due to the reduction of flow velocity through the separator, are flushed out of the separator with discharge water. When the discharge line empties, or the pump is restarted, the door closes under the spring bias.

USP 6,032,538—A mounting device for pressure transducers comprises a housing with two chambers separated by an acoustic filter/heat sink. A blast shield having at least one opening allows communication between the measured environment and the first chamber and provides protection to the acoustic filter/heat sink film blast particles and flame. The acoustic filter/heat sink comprises a plurality of tortuous paths through a material having a high thermal conductivity and high specific gravity. The pressure transducer is located in the second chamber and is mounted on a thermally insulating mounting plate. The tortuous paths provide attenuation of high frequency, high amplitude pressure transients, cools the medium entering the filter due to the pressure transient and protects the transducer from corrosive particles and aerosols.

USP 6,047,782—An assembly for extracting discrete soil samples from subsurface soil at a plurality of selected depths includes an elongated outer tubular housing, and a soil sample tube for disposal in the outer tubular housing. The soil sample tube is movable axially in the outer tubular housing and provided with a feature thereon for locking the soil sample tube in the outer tubular housing in a fully inserted position in the outer tubular housing. The replaceable soil sample tube defines a sample chamber proximate a distal end thereof. The assembly further includes a cone tip assembly including a cone tip member and a cone tip rod, the cone tip member being fixed to a distal end of the cone tip rod. The cone tip rod is movable axially in the soil sample tube, the cone tip member having a locking feature thereon for locking the cone tip member at the distal end of the soil sample tube with a cone portion of the cone tip member extending distally beyond a distal end of the outer tubular housing. A method for extracting soil samples, utilizing the above assembly, is also contemplated.

USP 6,053,479—The invention relates to a passive snow removal system which deliberately forms vortices from a passing airflow and directs the vortices into scouring contact with snow accumulation on a target surface. The apparatus includes a base and a vortex producing plate rotatably mounted at an inclined angle relative to an upper portion of the base near the plate's center of mass. The geometry of the plate, which is preferably triangular, is used to aerodynamically form vortices from a passing airflow and direct the vortices onto a target surface. Once the vortices are in scouring contact with the target surface, they act upon the surface to dislodge and carry away any accumulated snow in the direction of the airflow and redeposit it downwind, thus removing the snow from the target surface.

USP 6,064,760—A method for rigorously reshaping a pair of overlapping digital images using a Digital Photogrammetric Workstation (DPW) is disclosed. The overlapping images are imported into the DPW as a pair of originally distorted images having an associated sensor model. The original images are triangulated to adjust sensor parameters. Orthophotos are created with a flat digital terrain matrix (DTM) to leave terrain displacements within themselves, and

according to a sensor model and formula for exact projective computations. The orthophotos are aligned by rotation, and interior orientation coordinates of the equivalent vertical frame images are determined. The orthophotos are imported as a pair of overlapping equivalent vertical frame images according to the interior orientation coordinates. A digital terrain model is generated in the DPW using the overlapping equivalent vertical frame images. Another orthophoto is produced using the digital terrain model to remove the measured terrain displacements. In an alternative embodiment, the equivalent vertical frame images are aligned by using the classical pair-wise rectification method or by separately rotating each image without aligning the orthophotos by rotation during their creation. In each embodiment, the sensor model of the original distorted images is dissociated from the orthophotos for subsequently greater distribution and usage of the stereo imagery.

USP 6,084,393—A scour probe assembly comprises an elongated rigid tubular member of electrically insulative material, an anchoring structure fixed to a distal end of the tubular member, and a signal transmission device mounted on the tubular member. A pair of substantially parallel electrically conducive sensor lines are fixed to an external wall of the tubular member and extend along at least a portion of an axial length of the tubular member from a closed proximal end toward the distal end and extend through the closed proximal end to an interior of the tubular member. Electronic components are disposed in the interior of the tubular member and are interposed between ends of the sensor lines in the interior of the tubular member and the signal transmission device mounted in the tubular member.

USP 6,095,052—A bullet comprises a lead sheet and a zinc foil fixed to the lead sheet, the sheet and foil being rolled and pressure formed into a bullet having generally helical layers of the lead sheet and zinc foil. The bullet exhibits an improved environmental impact on soil, relative to all-lead bullets.

USP 6,104,298—A roof moisture detection assembly includes an imaging system for obtaining thermal and visible images of a roof surface, an imaging system support structure for mounting the imaging system in a position elevated relative to the roof surface, a reference target mounted on the roof surface, and an image-processing system adapted to compare current thermal and visible images of the roof surface with previous thermal and visible images of the roof surface and detect shapes and areas of anomalous features, and to compare the current thermal and visible images with each other and detect shapes and areas of anomalous features.

USP 6,109,486—Dry sand is ''rained'' or pluviated into a receptor container used in the study of soil mechanics. A supply vessel in the shape of an open-top rectangular box has four vertical side walls, a perforated bottom tray, and a slidable perforated tray in contact therewith, whereby sand flows by gravity from the supply vessel through perforations in the stationary and slidable trays and rains or pluviates into the receptor container when the slidable tray is in the ''open'' position, and sand is blocked from flowing from the supply vessel with the slidable tray in the ''closed'' position.

USP 6,116,353—A well assembly device comprises an outer tubular sleeve with a first end and second end. An inner tubular member has a first end and second end. An inner tubular member has a first end, and the inner tubular member is disposed within the outer tubular sleeve. The inner tubular member includes a screened portion at its second end. A tip is frictionally secured to the second end of the outer tubular sleeve, so that the outer tubular sleeve and the tip may selectively disengage.

Applications for an exclusive or partially exclusive license should contain the information set forth in 37 CFR 404.8. Applications will be evaluated utilizing the following criteria: (1) Ability to manufacture and market the technology; (2) Manufacturing and marketing capability; (3) Time required to bring technology to market and production rate; (4) Royalties; (5) Technical capabilities; and, (6) Small Business status.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–31327 Filed 12–7–00; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–262–001]

Florida Power Corporation; Notice of Filing

December 1, 2000.

Take notice that on November 27, 2000, Florida Power Corporation (Florida Power or Company), tendered for filing two amended executed Interconnection and Operating Agreements (Interconnection Agreements): One with Shady Hills Power Company, LLC (Shady Hills) and one with Reliant Energy Osceola, LLC (Reliant-Osceola). These two amended Interconnection Agreements will replace the ones originally filed by Florida Power in the above-referenced docket number on October 30, 2000. The Company is filing these amended versions to comply with the Company's pro forma Open Access Transmission Tariff (OATT) with respect to the establishment of an independent escrow account for disputed amounts and the interest rate on unpaid balances. The Company has also included additional cost of service data for each Interconnection Agreement.

The Company requests the same effective dates originally requested: October 1, 2000 for the Shady Hills Interconnection Agreement, and November 1, 2000 for the Reliant-Osceola Interconnection Agreement.

Copies of the filing were served on the Florida Public Service Commission and on the official service list in this 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 December 18, 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). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

David P. Boergers,

Secretary.

[FR Doc. 00–31279 Filed 12–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–441–024, et al.]

Geysers Power Company, LLC, et al.; Electric Rate and Corporate Regulation Filings

December 1, 2000.

Take notice that the following filings have been made with the Commission:

1. Geysers Power Company, LLC

[Docket No. ER98–441–024]

Take notice that on November 27, 2000, Geysers Power Company, LLC (Geysers Power), tendered for filing its revised Must-Run Service Agreement under which Geysers Power provides reliability must-run services to the California Independent System Operator Corporation (ISO) from the Geysers Main Units. This filing is made in compliance with the Federal Energy Regulatory Commission's (Commission) letter order dated October 26, 2000, Southern California Edison Co., *et al.,* 93 FERC ¶ 61,089 (2000) (Settlement Order), approving a settlement among Geysers Power, the ISO and others (Settlement), Cabrillo Power I LLC, Cabrillo Power II LLC, Duke Energy Moss Landing LLC, Duke Energy Oakland LLC, Duke Energy South Bay LLC, El Segundo Power, LLC, Pacific Gas and Electric Company, Reliant Energy Etiwanda, LLC, Reliant Energy Mandalay, LLC, Southern Energy Delta, L.L.C., Southern Energy Potrero, L.L.C., Williams Energy Marketing and Trading Company, San Diego Gas & Electric Company, the California Electricity Oversight Board and Southern California Edison Company (Settlement).

As recognized in the Settlement Order, Geysers Power joined the Settlement as to the resolution of issues pertaining to billing and invoicing only. Therefore, this filing reflects substantive revisions only to Article 9 and to related definitions of Geysers Power's currently effective Must-Run Service Agreement. Geysers Power also reports that it owes no refunds as a result of the Settlement.

Comment date: December 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. FirstEnergy Services, Inc.

[Docket No. ER01–103–001]

Take notice that on November 28, 2000, FirstEnergy Services, Inc. (Services), tendered for filing pursuant to Section 205 of the Federal Power Act and the Federal Energy Regulatory Commission's regulations thereunder a revised Market-Based Rate Power Sales Tariff for wholesale electricity sales to become effective upon consummation of the merger of Services and FirstEnergy Trading Services, Inc.

Comment date: December 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Sierra Pacific Power Company

[Docket No. ER01–409–001]

Take notice that on November 28, 2000, Sierra Pacific Power Company (Sierra) tendered for filing with the Commission a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with Morgan Stanley Capital Group Inc. The Agreement with Morgan Stanley Capital Group Inc., was referenced in Sierra's filing letter dated November 8, 2000, in the above referenced docket but was not attached thereto.

Copies of this filing were served upon the Public Utilities Commission of Nevada, the Public Utilities Commission of California and all interested parties.

Comment date: December 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. New York Independent System Operator, Inc.

[Docket No. ER01–512–000]

Take notice that on November 27, 2000, the Members of the Transmission Owners Committee of the Energy Association of New York State, formerly known as the Member Systems of the New York Power Pool (Member Systems), tendered for filing revised transmission service agreements. The Member Systems state that these tariff sheets are in compliance with the Commission's October 26, 2000 order in this proceeding. Central Hudson Gas & Electric Corp., *et al.*, 93 FERC ¶ 61,091 (2000).

A copy of this filing was served upon all persons on the official service list in the captioned proceeding.

Comment date: December 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. American Transmission Company LLC

[Docket No. ER01–514–000]

Take notice that on November 27, 2000, American Transmission Company LLC (ATCLLC), tendered for filing service agreements for firm and non-firm point-to-point transmission service for the following customers under ATCLLC's Open Access Tariff.

PEPCO Energy Company
LG&E Energy Marketing, Inc.
Madison Gas & Electric Company
Wisconsin Electric Power Company
Wisconsin Public Service Corporation

ATCLLC requests an effective date of January 1, 2001.

Comment date: December 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Sithe Edgar LLC, Sithe New Boston LLC, Sithe Framingham LLC, Sithe West Medway LLC, Sithe Wyman LLC, Sithe Mystic LLC, AG-Energy, L.P., Power City Partners, L.P., Seneca Power Partners, L.P., Sterling Power Partners, L.P., Sithe Power Marketing, L.P., Sithe Power Marketing, Inc.

[Docket No. ER01–513–000]

Take notice that on November 27, 2000, Sithe Edgar LLC, Sithe New Boston LLC, Sithe Framingham LLC, Sithe West Medway LLC, Sithe Wyman LLC, Sithe Mystic LLC, AG-Energy, L.P., Power City Partners, L.P., Seneca Power Partners, L.P., Sterling Power Partners, L.P., Sithe Power Marketing, L.P. and Sithe Power Marketing, Inc. (the Sithe Jurisdictional Affiliates), tendered for filing an Application For Authorization To Remove Prohibition On Inter-Affiliate Sales, Cancel Codes Of Conduct And For Expedited Action.

Comment date: December 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Avista Corp.

[Docket No. ER01–516–000]

Take notice that on November 27, 2000, Avista Corp. (AVA), tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements for Short-Term Firm and Non-Firm Point-To-Point Transmission Service under AVA's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8 with Sacramento Municipal Utility District (SMUD).

AVA requests the Service Agreements be given a respective effective date of November 13, 2000.

Comment date: December 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Boston Edison Company

[Docket No. ER01–515–000]

Take notice that on November 27, 2000, Boston Edison Company (Boston Edison), tendered for filing a local network integration transmission service agreement between Boston Edison and ANP Blackstone Energy Company (ANP Blackstone). Boston Edison states that the service agreement sets out the transmission arrangements under which Boston Edison will

provide local network integration transmission service to ANP Blackstone under Boston Edison's open access transmission tariff accepted for filing in Docket No. ER00–2065–000.

Boston Edison requests waiver of the Commission's thirty (30) day notice requirement in order to allow the service agreement to become effective on October 1, 2000.

Comment date: December 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Northern Indiana Public Service Company

[Docket No. ER01–518–000]

Take notice that on November 28, 2000, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and Alliance Energy Services Partnership (Alliance).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Alliance pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission.

Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of November 29, 2000.

Copies of this filing have been sent to Alliance Energy Services Partnership, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment date: December 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Northern Indiana Public Service Company

[Docket No. ER01–519–000]

Take notice that on November 28, 2000, Northern Indiana Public Service Company tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and MidAmerican Energy Company (MECR).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to MECR pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission.

Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of November 29, 2000.

Copies of this filing have been sent to MidAmerican Energy Company, the Indiana Utility Regulatory Commission, and the Indiana Office of Utility Consumer Counselor.

Comment date: December 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Covert Generating Company, LLC

[Docket No. ER01–520–000]

Take notice that on November 28, 2000, Covert Generating Company, LLC (Covert), tendered for filing pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's Regulations, a petition for authorization to make sales of capacity, energy, and certain Ancillary Services at market-based rates, to reassign transmission capacity, and to resell Firm Transmission Rights. Covert proposes to construct a natural gas-fired, combined cycle power plant of approximately 1,200 MW capacity in Covert Township, Van Buren County, Michigan.

Comment date: December 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. American Transmission Company LLC

[Docket No. ER01–521–000]

Take notice that on November 28, 2000, American Transmission Company LLC (ATCLLC), tendered for filing a Generation-Transmission Interconnection Agreement between ATCLLC and Wisconsin Public Service Corporation.

ATCLLC requests an effective date of January 1, 2001.

Comment date: December 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–31278 Filed 12–7–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–94–003]

Florida Gas Transmission Company; Notice of Intent to Prepare an Environmental Assessment for the Proposed Modified Tampa South Lateral Extension and Request for Comments on Environmental Issues

December 4, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the proposed modified route of the Tampa South Lateral Extension (TSLE) involving construction and operation of facilities by Florida Gas Transmission Company (FGT) in Hillsborough County, Florida.[1] Specifically FGT proposes to modify its certificate in Docket No. CP99–94–000. The proposed facilities would consist of about 6.2 miles of 6– and 8-inch-diameter pipeline. This EA will be used by the Commission in its decision-making process to determine whether the proposed modified route for TSLE is preferable to the certificated route.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need

[1] FGT's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

To Know?'' was attached to the FGT project notice provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*www.ferc.fed.us*).

Summary of the Proposed Project

FGT wants to modify the route and pipe size of the TSLE as previously certificated by the Commission on February 28, 2000 which authorized the construction and operation of FGT's Phase IV Expansion Project. FGT seeks to change the route of the TSLE, which includes a change in the pipeline length from about 5.62 miles to 6.18 miles to transport additional natural gas to a local distribution company. Specifically FGT proposes to construct and operate:

- About 6.0 miles of 6-inch-diameter pipeline in Hillsborough County, Florida;
- About 0.2 miles of 8-inch-diameter pipeline in Hillsborough County, Florida; and
- Change the location of the National Gypsum Regulatory Station to milepost 5.97 on the modified TSLE route.

The location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 39.9 acres of land. Following construction, about 8.3 acres would be maintained as permanent right-of-way for operational use. The remaining 31.6 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands,
- Vegetation and wildlife
- Endangered and threatened species
- Land use
- Cultural resources
- Hazardous waste
- Public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 4.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by FGT. This preliminary list of issues may be changed based on your comments and our analysis.

- A total of 0.02 linear mile of proposed facilities would be within residential areas.
- The proposed project would require two major waterbody crossings greater than 100 feet in width (Alafia River and Bullfrog Creek).
- A comparison of the proposed route, the certificated route, and other route alternative that may be reasonable.

Public Participation and Scoping Meeting

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EAa and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Group 2.
- Reference Docket No. CP99–94–003.
- Mail your comments so that they will be received in Washington, DC on or before January 3, 2001.

Comments may also be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm* under the link to the User's Guide. Before you can file comments you will need to create an account which can be created by clicking on ''Login to File'' and then ''New User Account.''

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meeting the FERCc will conduct in the project area. The location and time for the meeting is listed below.

Date and Time: December 19, 2000 7 p.m.

Location: Gardenville Recreation Center, 6215 Symmes Road, Gibsonton, Florida 33534.

The public meetings are designed to provide you with more detailed information and another opportunity to offer your comments on the proposed project. Interested groups and individuals are encouraged to attend the meeting and to present comments on the environmental issues they believe should be addressed in the EA. A transcript of the meeting will be made so that your comments will be accurately recorded.

[2] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

On the date of the meeting, our staff will also be visiting project area. Anyone interested in participating in a site visit may contact the Commission's Office of External Affairs identified at the end of appendix 1 of this notice for more details and must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to became an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–0004 or on the FERC website (*http://www.ferc.fed.us*) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202)) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–31280 Filed 12–7–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

December 4, 2000.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection.

a. *Type of Applications:* Two new licenses and three subsequent licenses.

b. *Project Nos.:* 2942–005, 2931–002, 2941–002, 2932–003, and 2897–003.

c. *Date Filed:* January 22, 1999.

d. *Applicant:* S. D. Warren Company.

e. *Names of Projects:* Dundee, Gambo, Little Falls, Mallison Falls, and Saccarappa.

f. *Location:* On the Presumpscot River, near the towns of Windham, Gorham, and Westbrook, in Cumberland County, Maine. These projects do not utilize any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas Howard, S. D. Warren Company, 89 Cumberland Street, P.O. Box 5000, Westbrook, ME 04098–1597, 207–856–4286.

i. *FERC Contact:* Jim Haimes; james.haimes@ferc.fed.us, 202–219–2780.

j. *Deadline for Filing Comments, Recommendations, Terms and Conditions, and Prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, the intervener also must serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website at *http://www.ferc.fed.us/efi/doorbell.htm.*

k. *Status of Environmental Analysis:* These applications have been accepted for filing and are ready for environmental analysis at this time.

l. *Description of the Projects (from upstream to downstream):*

The Dundee Project consists of the following existing facilities: (1) A 1,492-foot-long dam, consisting of two, 50-foot-high earthen embankments separated by a 50-foot-long, 42-foot-high concrete spillway section, a 90-foot-long by 50-foot-high non-overflow section, and a 27-foot-long gate section; (2) a 1.7-mile-long-impoundment extending from the Dundee dam upstream to the tailwaters of the North Gorham Project, with a surface area of approximately 197 acres at normal elevation, 187.22 feet U.S. Geological Survey datum (USGS); (3) a 44-foot-wide by 74-foot-long, reinforced concrete powerhouse, which is integral to the spillway section of the dam; (4) three turbine generator units, each with a rated capacity of 800 kilowatts (kW) for a total project installed capacity of 2,400 kW; (5) a 1,075-foot-long bypassed reach; (6) a 1,075-foot-long, 30-foot-wide, by 11-foot-deep tailrace; (3) two 10-mile-long, 11-kilovolt (kV) transmission lines; and (7) other appurtenances.

The Gambo Project consists of the following existing facilities: (1) a 250-foot-long, 24-foot-high, concrete overflow section and 50-foot-long intake structure; (2) a 3.3-mile-long impoundment extending from the Gambo dam upstream to the tailwaters of the Dundee Project, with a surface area of approximately 151 acres at normal elevation, 135.13 feet USGS; (3) a 737-foot-long by 15-foot-deep, concrete-lined intake canal; (4) a 47-foot-wide by 78-foot-long, reinforced concrete and brick powerhouse; (5) two turbine generator units, each with a rated capacity of 950 kW, for a total project installed capacity of 1,900 kW; (6) a 300-foot-long bypassed reach; (7) an 8-mile-long, 11-kV transmission line; and (8) other appurtenances.

The Little Falls Project consists of the following existing facilities: (1) A 330-foot-long by 14-foot-high, reinforced concrete and masonry dam incorporating a 70-foot-long intake structure; (2) a 1.7-mile-long impoundment extending from the Little Falls dam upstream to the Gambo dam, with a surface area of approximately 29 acres at normal elevation, 108.7 feet USGS; (3) a 25-foot-wide by 95-foot-long, masonry powerhouse, which is integral to the dam; (4) four turbine generator units, each with a rated capacity of 250 kW, for a total project installed capacity of 1,000 kW; (5) a 300-foot-long bypassed reach; (6) an 11-kW transmission line tied into the

Gambo Project transmission line; and (7) other appurtenances.

The Mallison Falls Project consists of the following existing facilities: (1) A 358-foot-long by 14-foot-high, reinforced concrete, masonry and cut granite diversion dam; (2) a 0.5-mile-long impoundment extending from the Mallison Falls dam upstream to the tailwaters of the Little Falls Project, with a surface area of approximately 8 acres at normal elevation, 90.6 feet USGS; (3) a 70-foot-long headgate structure; (4) a 675-foot-long, 41-foot-wide, by 6-foot-deep, bedrock lined intake canal; (50 a 33-foot-wide by 51-foot-long, reinforced concrete and masonry powerhouse; (6) two turbine generator units, each with a rated capacity of 400 kW, for a total project installed capacity of 800 kW; (7) a 675-foot-long bypassed reach; (8) an 11-kV transmission line tied into the Gambo Project transmission line; and (9) other appurtenances.

The Saccarappa Project consists of the following existing facilities: (1) A 322-foot-long diversion dam consisting of two concrete overflow structures separated by an island; (2) a 5.0-mile-long impoundment extending from the Saccarappa dam upstream to the tailwaters of the Mallison Falls Project, with a surface area of approximately 87 acres at normal elevation, 69.96 feet USGS; (3) two bypassed reaches measuring 475 feet and 390 feet long; (4) a 380-foot-long by 36-foot-wide intake canal; (5) a 49-foot-wide by 71-foot-long, masonry powerhouse; (6) three turbine generator units, each with a rated capacity of 450 kW for a total project capacity of 1,350 kW; (7) a 345-foot-long tailrace formed by a 33-foot-high guard wall; (8) a 1-mile-long 2.3-kV transmission line/generator lead; and (9) other appurtenances.

The five projects operate continuously to generate electricity that is utilized at Warren's pulp and paper mill facilities in Westbrook, Maine. Under typical daily operations, Warren maximizes output by manually controlling of each of the five projects in response to flow inputs from Warren's upstream Eel Weir Project (FERC No. 2984), located at the outlet of Sebago Lake, and various minor tributaries to the Presumpscot River downstream of the Eel Weir Project. Daily impoundment level fluctuations of 2 feet or less typically occur at the Little Falls, Mallison Falls, and Saccarappa Projects, impoundment fluctuations of up to 1 foot per day occur at the Dundee and Gambo Projects.

m. *Locations of the Applications:* Copies of each of the five applications are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20246, or by calling (202) 208–1371. The applications also may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance). Copies also are available for inspection and reproduction at the address in item h, above.

n. Filing and Service of Responsive Documents—The Commission directs pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions, and prescriptions concerning the applications be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS'', ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number(s) of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 00–31281 Filed 12–7–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00304; FRL–6759–8]

TSCA Section 8(a) Preliminary Assessment Information Rule; Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), EPA is seeking public comment and information on the following Information Collection Request (ICR): TSCA Section 8(a) Preliminary Assessment Information Rule (EPA ICR No. 0586.09, OMB No. 2070–0054). This ICR involves a collection activity that is currently approved and scheduled to expire on December 31, 2000. The information collected under this ICR relates to identifying, assessing, and managing human health and environmental risks from chemical substances, mixtures, or categories. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number OPPTS–00304 and administrative record number AR–231, must be received on or before February 6, 2001.

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 OPPTS–00304 and administrative record number AR–231 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Paul Campanella, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania

Ave., NW., Washington, DC 20460; telephone number: (202) 260–3948; fax number: (202) 260–8168; e-mail address: campanella.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a manufacturer or importer of chemical substances, mixtures, or categories. Potentially affected categories and entities may include, but are not limited to:

Type of business	NAICS codes
Basic Chemical Manufacturing	3251
Resin, Synthetic Rubber and Artificial Synthetic Fibers and Filaments Manufacturing	3252
Paint, Coating, and Adhesive Manufacturing	3255
Pesticide, Fertilizer, and Other Agricultural Chemical Manufacturing	3253
Other Chemical Product and Preparation Manufacturing	3259
Petroleum Refineries	32411

This table 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 this table could also be affected. The North American Industry Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. 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/. On the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. Fax-on-Demand

Using a faxphone call (202) 401–0527 and select item 4084 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket control number OPPTS–00304 and administrative record number AR–231. 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 TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00304 and administrative record number AR–231 on the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified in Units III.A.1. and 2. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–00304 and administrative record number AR–231. Electronic comments may also be filed online at many Federal Depository Libraries.

B. 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 technical person listed under **FOR FURTHER INFORMATION CONTACT**.

C. What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number and administrative record 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.

D. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are 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 estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: TSCA Section 8(a) Preliminary Assessment Information Rule.

ICR numbers: EPA ICR No. 0586.09, OMB No. 2070–0054.

ICR status: This ICR is currently scheduled to expire on December 31, 2000. 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 information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: TSCA section 8(a) authorizes EPA to promulgate rules under which manufacturers, importers and processors of chemical substances and mixtures must maintain records and submit reports to EPA. EPA has promulgated the Preliminary Assessment Information Rule (PAIR) under TSCA section 8(a). EPA uses PAIR to collect information to identify, assess, and manage human health and environmental risks from chemical substances, mixtures, or categories. PAIR requires chemical manufacturers and importers to complete a standardized reporting form to help evaluate the potential for adverse human health and environmental effects caused by the manufacture or importation of identified chemical substances, mixtures, or categories. Chemicals identified by EPA or any other Federal agency, for which a justifiable information need for production, use or exposure-related data can be satisfied by the use of the PAIR are proper subjects for TSCA section 8(a) PAIR rulemaking. In most instances the information that EPA receives from a PAIR report is sufficient to satisfy the information need in question.

Responses to the collection of information are mandatory (see 40 CFR part 712). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

V. What are EPA's Burden and Cost Estimates for this ICR?

Under the PRA, ''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. For this collection it 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 28.45 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Manufacturers and importers of chemical substances, mixtures, or categories.

Estimated total number of potential respondents: 48.

Frequency of response: On occasion.

Estimated average number of responses for each respondent: 2.4.

Estimated total annual burden hours: 3,355.

Estimated total annual burden costs: $250,000.

VI. Are There Changes in the Estimates from the Last Approval?

There is a net decrease of 134 hours (from 3,489 hours to 3,355 hours) in the total estimated respondent burden compared with that identified in the information collection request most recently approved by OMB. This decrease is attributable to carrying through in the burden hour totals the adjustment made to the unit burden of the CBI substantiation requirement, which is that only 75% of sites or reports are expected to make CBI claims. This adjustment was made in the unit burden calculations in the previous ICR but was not carried through in the industry totals. In addition, a few minor mathematical corrections were made to the estimates in the previous ICR.

VII. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 30, 2000.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–31335 Filed 12–7–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6913–7]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement

agreement, which was filed with the United States Court of Appeals for the District of Columbia Circuit by the United States Environmental Protection Agency (''EPA'') on November 21, 2000, to address a lawsuit filed by the Sierra Club and the New York Public Interest Research Group (collectively referred to as ''Sierra Club''). Sierra Club filed a petition for review pursuant to section 307(b) of the Act, 42 U.S.C. 7607(b) challenging EPA's extension of the interim approval of title V permitting programs for approximately 80 permitting authorities. *Sierra Club* v. *EPA*, No. 00–1262 (D.C. Cir.).

DATES: Written comments on the proposed settlement agreement must be received by January 8, 2001.

ADDRESSES: Written comments should be sent to Jan M. Tierney, Air and Radiation Law Office (2344), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Copies of the proposed settlement agreement are available from Phyllis J. Cochran, (202) 564–5566. A copy of the proposed settlement agreement was filed with the Clerk of the United States Court of Appeals for the District of Columbia Circuit on November 21, 1999.

SUPPLEMENTARY INFORMATION: Sierra Club alleges that EPA acted contrary to law by extending the interim approval of title V permitting programs for more than 80 permitting authorities. Under title V of the CAA, EPA promulgated regulations specifying the requirements for State operating permit programs. States, or local permitting authorities to which the States delegated authority, submitted programs to EPA for approval in the early to mid 1990's. Pursuant to section 502(g) of the Act, 42 U.S.C. 7661a(g), EPA granted interim approval of a number title V permitting programs. Subsequently, EPA extended the interim approval of programs through a series of notices in the **Federal Register**. Most recently, on May 22, 2000, EPA took final action extending the interim approval for approximately 80 title V permitting programs and Sierra Club challenged that final action.

The settlement agreement provides that Sierra Club's challenge to EPA's final action will be stayed pending several actions by the Agency. Pursuant to the key provisions of the settlement agreement, Sierra Club may request the court to lift the stay of the litigation if EPA fails to: (A) Propose by December 15, 2000, amendments to 40 CFR 70.4(d)(2)to eliminate language that could be construed to grant EPA authority to extend further interim approval of a title V permitting program; (B) take final action by June 1, 2000, promulgating such amendments; (C) notify by December 1, 2000, each permitting authority by letter that a federal program will apply if EPA has not fully approved a revised title V permit program for the area by December 1, 2001; and (D) issue by December 1, 2000, a notice informing the public that they may submit comment identifying deficiencies with approved or interim approved title V permit programs and that EPA will respond to such comments by specified dates.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, following the comment period, that consent is inappropriate, the settlement agreement will be final.

Dated: December 1, 2000.

Anna Wolgast,

Acting General Counsel.

[FR Doc. 00–31334 Filed 12–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6913–6]

Notice of Settlement Extension: National Ambient Air Quality Standard; Sulfur Oxides Remand

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of settlement extension.

SUMMARY: In 1998, the United States Court of Appeals for the D.C. Circuit remanded EPA's decision to not revise the National Ambient Air Quality Standard for sulfur oxides for further explanation by EPA. *American Lung Association* v. *Browner*, 134 F. 3d 388 (D.C. Cir. 1998). Subsequently, the American Lung Association (ALA) and EPA agreed that EPA would propose a response to the court's remand by summer, 1999 and that EPA would finalize its response to the remand by the end of the year 2000. In exchange, ALA agreed to not file a petition for rehearing en banc with the court and to not pursue any mandatory duty or unreasonable delay claims regarding the remand prior to January, 2001.

In September 1999, EPA and ALA met to discuss the status of the remand and agreed to extend the summer, 1999 deadline until January 15, 2000.

Since that time EPA and ALA have continued discussions and EPA has continued to work on the remand. As a result, EPA and ALA have agreed that by the end of 2000, EPA will publish a notice in the **Federal Register** describing the status of the remand and related activities and soliciting appropriate comment. For its part, ALA has agreed not to pursue any mandatory duty or unreasonable delay claims regarding the remand prior to January, 2001.

Dated: December 1, 2000.

Anna Wolgast,

Acting General Counsel.

[FR Doc. 00–31333 Filed 12–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6613–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *www.epa.gov/oeca/ofa.*

Weekly receipt of Environmental Impact Statements Filed November 27, 2000 Through December 1, 2000 Pursuant to 40 CFR 1506.9.

EIS No. 000416, DRAFT EIS, SFW, CA, Metro Air Park Habitat Conservation Plan, Issuance of an Incidental Take Permit, To Protect, Conserve and Enhance Fish, Wildlife and Plants and their Habitat, Natomas Basin, Sacramento County, CA, Due: February 6, 2001, Contact: Vickie Campbell (916) 414–6600.

EIS No. 000417, DRAFT EIS, NPS, GA, Cumberland Island National Seashore General Management Plan, Wilderness Management Plan, Commercial Services Plan, Interpretation Plan, Resource Cultural and Natural Management Plan, Implementation, St. Marys County, GA, Due: April 9, 2001, Contact: Arthur Frederick (912) 882–4336.

EIS No. 000418, FINAL EIS, AFS, MN, Little East Creek Fuel Reduction Project, Plan to Grant Access Across Federal Land to Non-Federal Landowners, Implementation, LaCroix Ranger District, Superior

National Forest, Saint Louis County, MN, Due: January 8, 2001, Contact: Jim Thompson (218) 666–0020.

EIS No. 000419, DRAFT EIS, MMS, LA, AL, MS, FL, Eastern Planning Area Outer Continental Shelf Oil and Gas Lease Sale 181 (December 2001), Gulf of Mexico, Offshore Marine Environment and Coastal Counties/ Parishes of LA, MI, AL and northwestern FL, Due: January 22, 2001, Contact: Archie Melancon (703) 787–1547.

EIS No. 000420, THIRD DRAFT SUPPLEM, NOA, Atlantic Sea Scallop Fishery Management Plan (FMP), Updated Information, Framework Adjustment 14 to adjust the annual Amendment 7 day-at-sea allocation for 2001 and 2002 and to re-open portions of the Hudson Canyon and Virginia/North Carolina Areas for Scallop Fishing, Due: January 24, 2001, Contact: Patricia Churchill (202) 482–5916.

EIS No. 000421, DRAFT EIS, COE, CA, Guadalupe Creek Restoration Project, Restore Riparian Vegetation and Native Anadromous Fish Habitat, From Almaden Expressway to Masson Dam, Implementation, Guadalupe River, Santa Clara County, CA, Due: January 22, 2001, Contact: Brad Hubbards (916) 557–7054.

EIS No. 000422, FINAL EIS, USN, NY, Naval Weapons Industrial Reserve Plant Bethpage to Nassau County, Transfer and Reuse, Preferred Reuse Plan for the Property, Town of Oyster Bay, Nassau County, NY, Due: January 2, 2001, Contact: Robert K. Ostermueller (610) 595–0759.

This Notice of Availability should have appeared in the 12/1/2000 **Federal Register**. The Official Wait Period began on 12/1/2000 and ends on 1/2/2001.

Dated: December 5, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–31349 Filed 12–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6613–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated April 14, 2000 (65 FR 20157).

Draft EISs

ERP No. D–COE–C35014–NJ Rating EU2, Meadowlands Mills Project, Construction of a Mixed-Use Commercial Development, Permit Application Number 95–07–440–RS for Issuance of a USCOE Section 404 Permit, Boroughs of Carlstadt and Monnachie, Township of South Hackensack, Bergen County, NJ.

Summary: EPA raised significant objections to the applicant's preferred alternative and other alternatives due to adverse impacts to wetlands and availability of less damaging alternatives. EPA requested additional information regarding alternatives, air quality impacts and compensatory mitigation plans.

ERP No. DR–IBR–K39049–CA Rating EC2, Coachella Canal Lining Water Project, Revised and Updated Information, Approval of the Transfers and Exchanges of Conserved Coachella Canal Water, Construction, Operation and Funding, Riverside and Imperial Counties, CA.

Summary: EPA requested formal responses to comments sent on the original Draft EIS in 1994, and raised additional concerns involving monitoring of water quality, modeling of area-wide impacts, and consultation with tribal governments.

ERP No. DS–IBR–K28019–CA Rating EO2, East Bay Municipal Utility District Supplemental Water Supply Project and Water Service Contract Amendment, New and Additional Information on Alternatives, American River Division of the Central Valley Project (CVP), Sacramento County, CA.

Summary: EPA expressed objections regarding the level of detail and analysis of Alternatives 4 and 8, insufficient information on the impacts of wetlands, the potential growth inducing effects of the project, the absence of an analysis of how this project ties into the broader water allocation and ecosystem protection goals of CALFED and CVPIA, and how the water quality of the selected drinking water source will be protected. EPA requested that a greater level of detail and analysis be provided on these issues.

Final EISs

ERP No. F–COE–E30041–NC, Dare County Beaches (Bodie Island Portion) Hurricane Wave Protection and Beach Erosion Control, The towns of Nags Head, Kill Devil Hills, Kitty Hawk, Dare County, NC.

Summary: EPA continues to express concern regarding the adverse effect on the nearshore ecosystem caused by maintaining a given beach profile.

ERP No. F–COE–K36129–CA, Santa Ana River Mainstem Project Including Santiago Creek, Proposal to Complete Channel Improvements along San Timoteo Creek Reach 3B to provide Flood Protection, San Bernardino County, CA.

Summary: EPA expressed continuing concerns regarding analysis of an alternative that would have less adverse impacts to San Timoteo Creek, the full extent of cumulative impacts to San Timoteo Creek from Corps of Engineers' flood control projects, and mitigation to compensate for unavoidable losses to aquatic resources.

Dated: December 05, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–31350 Filed 12–7–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00300; FRL–6747–6]

Proposed National Action Plan for Hexachlorobenzene; Notice of Availability and Solication of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: EPA has developed a draft National Action Plan to promote further voluntary reductions of releases and exposure to Hexachlorobenzene (HCB). This Notice announces the availability of the draft HCB National Action Plan for public review and comment. Hexachlorobenzene is currently formed as an inadvertent by-product at trace levels in the production of chlorinated solvents, pesticides, and in other chlorinated processes. This chemical is a persistent, bioaccumulative and toxic halogenated compound that persists in the environment and bioaccumulates in animal tissue. It is considered a probable human carcinogen and is toxic by all routes of exposure. The general population appears to be exposed to very low concentrations of HCB, primarily through ingestion of meat, dairy products, poultry and fish. The strategic approach of the Agency,

therefore, will involve voluntary initiatives to reduce releases and minimize media transfers, collect information to verify sources and sinks, and increase involvement with and assistance to international groups and other countries to reduce atmospheric deposition in the United States. This plan was developed pursuant to the Agency's Multimedia Strategy for Priority PBT Pollutants.

DATES: Comments, identified by docket control number OPPTS–00300, must be received on or before January 8, 2001.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00300 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: For general information contact: Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA–Hotline@epa.gov.

For technical information contact: Paul Matthai, Pollution Prevention Division, Mail Code 7409, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–3385; e-mail address: matthai.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are involved in the production of chlorinated solvents, pesticides and in other chlorinated processes which could form HCB as an inadvertent by product at trace levels. This Action Plan may also be of interest to persons involved in the use of hexachloroethane in secondary aluminum operations which could release HCB. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the **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, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/pbt. To access this document, on the PBT Home Page, select ''What's new.'' You can also go directly to the **FEDERAL REGISTER** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–00300. 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 TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 1200 Pennsylvania Ave., NW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00300 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–00300. Electronic comments may also be filed online at many Federal Depository Libraries.

D. 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 technical person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, 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 during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the rule or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **FEDERAL REGISTER** citation.

II. What Action is the Agency Taking?

On November 16, 1998, EPA released its draft Agency-wide Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic (PBT) Pollutants (PBT Strategy). The goal of the PBT Strategy is to identify and reduce risks to human health and the environment from current and future exposures to priority PBT pollutants. This document serves as the Draft National Action Plan for Hexachlorobenzene (HCB), one of the 12 Level 1 priority PBT pollutants identified for the initial focus of action in the PBT Strategy.

Hexachlorobenzene (CAS number 118–74–1) is a white, crystalline solid. It has been synthesized and used from the 1940s to the late 1970s as a fungicide on grain seeds such as wheat. HCB was also used in the past as a solvent and as an intermediate and/or additive in various manufacturing processes, including the production of PVC, pyrotechnics and ammunition, dyes, and pentachlorophenol. Although HCB is no longer used directly as a pesticide, it is currently formed as an inadvertent by-product at trace levels in the production of chemical solvents, chlorine-containing compounds, and several currently used pesticides.

HCB is a highly persistent environmental toxin that degrades slowly in air and remains in the atmosphere through long range transport. It bioaccumulates in the fatty tissues and its presence in fish, plants, and wild game species can be a source of ingestion exposure for humans. HCB is considered a probable human carcinogen and is toxic by all routes of exposure. Short-term high exposures can lead to kidney and liver damage, central nervous system excitation and seizures, circulatory collapse, and respiratory depression. Based on studies conducted on animals, long-term low exposures may damage a developing fetus, cause cancer, lead to kidney and liver damage, and cause fatigue and skin irritation.

The general population appears to be exposed to very low concentrations of HCB. Ingestion of HCB-contaminated fish and other wildlife is potentially the most significant source of exposure. Additional, although significantly less, exposure may occur through inhalation or dermal contact. However, certain subpopulations may be exposed to higher levels of HCB than the general population. These include: workers occupationally exposed to HCB; individuals living near facilities where HCB is produced as a by-product; individuals living near current or former hazardous waste sites where HCB is present; recreational and subsistence fishermen who consume higher amounts of locally caught fish and bivalves (mussels, oysters, clams) from contaminated waters, and native populations (including Native American populations such as the Inuits of Alaska) who consume caribou and other game species. Finally, nursing infants in these areas may also be particularly susceptible to effects due to the singular nature of their diet.

The goal of the Action Plan is to identify and further reduce risks to human health and the environment from existing and future exposure to HCB. However, there are information gaps related to the magnitude of known and suspected sources of HCB, the extent of pollution resulting from long-range transport, and the content of HCB in sinks such as sediments and sewage sludge that may contribute to environmental cycling within Unites States boundaries. Therefore, the strategic approach of the Agency will involve voluntary initiatives to reduce releases and minimize media transfers, collect information to verify sources and sinks, and increase involvement with and assistance to international groups and other countries to reduce atmospheric deposition in the United States.

EPA considers stakeholder involvement essential to reaching the goals of the PBT Strategy. Therefore, the Agency is seeking stakeholder input and invites comment on this draft National Action Plan on the following three areas related to HCB.

1. The identification and implementation of voluntary initiatives and outreach opportunities to reduce releases of and exposure to HCB, while minimizing controlled and uncontrolled (e.g., volatilization from water to air, deposition onto soil or plants) multi-media transfers.

2. Continued information collection and integration of data across media regarding sources, sinks, releases, environmental trends, and human food and tissue levels for HCB. Data collection will occur through Binational Toxics Strategy (BNS) efforts, Maximum Achievable Control Technology (MACT) standard development, various EPA permitting and reporting processes, and industry involvement.

3. Collaborate (or partner) with international organizations and foreign governments to assess the significance of long-range transport from other countries and to foster the proliferation of pollution prevention or control technology measures that will reduce inputs of HCB to the environment.

List of Subjects

Environmental protection, PBT, National Action Plan, and HCB.

Dated: November 27, 2000.

Susan H. Wayland,

Assistant Administrator for Office of Prevention, Pesticides, and Toxic Substances.

[FR Doc. 00–31336 Filed 12–7–00; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 00–2661]

The Minnesota Public Utilities Commission Petitions For Agreement To Redefine The Service Area Of Frontier Communications of Minnesota, Inc.

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Common Carrier Bureau provides notice that the Minnesota Public Utilities Commission has filed a petition requesting the Commission's consent to its proposed alternative ''service area'' definition for Frontier Communications of Minnesota, Inc.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith, Attorney, Accounting Policy Division, Common Carrier Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of a Commission's Public Notice in CC Docket No. 96–45 released on November 29, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

The Common Carrier Bureau provides notice that the Minnesota Public

Utilities Commission (Minnesota PUC) has filed a petition, pursuant to § 54.207 of the Commission's rules, requesting the Commission's consent to its proposed alternative ''service area'' definition for Frontier Communications of Minnesota, Inc. (Frontier). The Minnesota PUC proposes to adopt a definition of service area that differs from Frontier's ''study area'' for the purpose of determining universal service obligations and support mechanisms. Specifically, the Minnesota PUC proposes to classify each of the 45 individual exchanges served by Frontier as separate service areas. The Minnesota PUC contends that, without a redefinition of Frontier's service area, the Minnesota PUC will be unable to designate another carrier as an eligible telecommunications carrier (ETC) to serve any portion of Frontier's study area, even if such designation is in the public interest. The Minnesota PUC contends that it has taken into account the recommendations of the Federal-State Joint Board, as required by the Communications Act of 1934, as amended (the Act), and Commission rules.

Commission Rules

For areas served by a rural telephone company, section 214(e)(5) of the Act provides that the company's service area will be its study area ''unless and until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board instituted under section 410(c) of the Act, establish a different definition of service area for such company.'' Section 54.207 of the Commission's rules and the *Universal Service Order,* 62 FR 32862, June 17, 1997, set forth the procedures for consideration of petitions filed by state commissions seeking to designate service areas for rural telephone companies that are different from such companies' study areas. Specifically, § 54.207(c)(1) provides that such a petition shall contain: (i) the definition proposed by the state commission; and (ii) the state commission's ruling or other official statement presenting the state commission's reason for adopting its proposed definition, including an analysis that takes into account the recommendations of any Federal-State Joint Board convened to provide recommendations with respect to the definition of a service area served by a rural telephone company.

The Petition

On October 27, 1999, the Minnesota PUC issued an order granting preliminary approval to Minnesota Cellular Corporation, now known as Western Wireless Corporation (Western Wireless), for designation as an ETC under section 214(e) of the Act. In this order, the Minnesota PUC found that it was in the public interest to designate Western Wireless as an ETC in service areas served by rural telephone companies. At that time, the Minnesota PUC rejected the claim of Frontier that it was a rural telephone company.

On February 10, 2000, the Minnesota PUC issued an order on reconsideration finding, among other things, that Frontier was a rural telephone company under the Act. As a rural telephone company, section 214(e)(5) of the Act defines Frontier's service area as its study area, until and unless the Commission and the state establish a different definition. Accordingly, Frontier's study area would include all of Frontier's 45 existing exchanges in Minnesota. Pursuant to section 214(e)(1) of the Commission's rules, a carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanism throughout the entire service area. Because Western Wireless is licensed to serve only 29 of the 45 exchanges comprising Frontier's Minnesota study area, the Minnesota PUC rescinded its preliminary designation of Western Wireless as an ETC in areas served by Frontier.

On September 1, 2000, the Minnesota PUC issued an order concluding that Frontier's service area should be ''disaggregated on an exchange by exchange basis as this would allow CLECs [competitive local exchange carriers] which are designated a federal ETC to receive future federal high-cost funds, if any, for those exchanges in which they serve.'' The Minnesota PUC noted that Frontier's study area is comprised of 45 non-contiguous exchanges located throughout Minnesota and concluded that Frontier's service area should be redefined into 45 separate service areas based on those individual exchanges. The Minnesota PUC reasoned that this redefinition would promote competition by allowing CLECs that are designated ETCs to receive federal high-cost funds to provide service in part or all of Frontier's current service area. The Minnesota PUC therefore authorized a petition to be filed with the Commission requesting consent to its proposed alternative service area definition for Frontier's Minnesota service territory.

Status

Section 54.207(c)(3) of the Commission's rules provides that the Commission may initiate a proceeding to consider a petition to redefine the service area of a rural telephone company within ninety days of the release date of a Public Notice. If the Commission initiates a proceeding to consider the petition, the proposed definition shall not take effect until both the state commission and the Commission agree upon the definition of a rural service area, in accordance with section 214(e)(5) of the Act. If the Commission does not act on the petition within 90 days of the release date of the Public Notice, the definition proposed by the state commission will be deemed approved by the Commission and shall take effect in accordance with state procedures. Under § 54.207(e) of the Commission's rules, the Commission delegates its authority under § 54.207(c) to the Chief of the Common Carrier Bureau.

Federal Communications Commission.

Katherine L. Schroder,

Chief, Accounting Policy Division.

[FR Doc. 00–31351 Filed 12–7–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained

from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 4, 2001.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Bryan Family Management Trust, Bryan, Texas, and Bryan Heritage Limited Partnership, Bryan, Texas; to acquire 51 percent of the voting shares of The First National Bank of Bryan, Bryan, Texas.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Frontier Financial Corporation, Everett, Washington; to merge with Interbancorp, Inc., Duvall, Washington, and thereby indirectly acquire Inter Bank, Duvall, Washington.

Board of Governors of the Federal Reserve System, December 5, 2000.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 00–31323 Filed 12–7–00; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 22, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Bayerische Hypo– und Vereinsbank AG, Munich, Germany; to acquire Bank Austria Securities, Inc., New York, New York; and thereby indirectly acquire CAIB Securities (New York) Inc., New York, New York; Creditanstalt International Asset Management, Inc., New York, New York; Bank Austria Creditanstalt Corporate Finance, Inc., Greenwich, Connecticut; Bank Austria Commercial Paper, LLC, Greenwich, Connecticut; Bank Austria Creditanstalt Community Development, Inc., Greenwich, Connecticut; Bank Austria Creditanstalt Holdings Corporation (Railcar Leasing), Greenwich, Connecticut; Bank Austria Creditanstalt Equipment Leasing, Inc., Greenwich, Connecticut; and Bank Austria Creditanstalt Property Corporation (Leasing), Greenwich, Connecticut, and thereby engage in corporate finance and commercial lending activities, pursuant to § 225.28(b)(1) of Regulation Y; investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y; securities brokerage, private placement and riskless principal activities, pursuant to § 225.28(b)(7) of Regulation Y; community development activities, pursuant to § 225.28(b)(12) of Regulation Y; and in equipment leasing activities, pursuant to § 225.28(b)(3) of Regulation Y. These activities will be conducted worldwide.

Board of Governors of the Federal Reserve System, December 4, 2000.

Robert deV. Frierson

Associate Secretary of the Board.

[FR Doc. 00–31282 Filed 12–7–00; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Wednesday, December 13, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed amendments to Regulation Y (Bank Holding Companies and Change in Bank Control) to authorize financial holding companies to act as a ''finder'' by bringing buyers and sellers together for transactions that the parties themselves negotiate and consummate (proposed earlier for public comment; Docket No. R–1078).

Discussion Agenda

2. Publication for comment of proposed amendments to Regulation Z (Truth in Lending) related to potentially abusive practices in home mortgage lending. (Comments were solicited earlier on possible revisions; Docket No. R–1075.)

3. Consideration of a proposal for comment to amend Regulation Y (Bank Holding Companies and Change in Bank Control) to (a) increase the amount of nonfinancial data processing permissible for bank and financial holding companies and (b) allow financial holding companies to own companies engaged in certain data processing activities in connection with the provision of financial products and services.

4. Publication for comment of proposed amendments to Regulation Y (Bank Holding Companies and Change in Bank Control) that would permit financial holding companies to provide general real estate brokerage and real estate management services.

5. Proposed 2001 Federal Reserve Bank budgets.

6. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend.

Cassettes will then be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at

http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: December 6, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–31439 Filed 12–6–00; 2:12 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 12 noon, Wednesday, December 13, 2000, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 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: December 6, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–31440 Filed 12–6–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (FTC) has submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (PRA) information collection requirements contained in its Mail or Telephone Order Merchandise Trade Regulation Rule (MTOR or ''Rule''). The FTC is soliciting public comments on the proposal to extend through January 31, 2004 the current PRA clearance for information collection requirements contained in the Rule. That clearance expires on January 31, 2001.

DATES: Comments must be filed by January 8, 2001.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503, ATTN: Desk Officer for the Federal Trade Commission, and to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. All comments should be captioned ''Mail or Telephone Order Merchandise Trade Regulation Rule: Paperwork comment.''

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Joel N. Brewer, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room S–4632, 601 Pennsylvania Ave., NW., Washington DC 20580.

SUPPLEMENTARY INFORMATION: On October 3, 2000, the FTC sought comment on the information collection requirements associated with MTOR, 16 CFR Part 435 (Control Number: 3084–0106). See 65 FR 58997. No comments were received.

The Rule was promulgated in 1975 in response to consumer complaints that many merchants were failing to ship merchandise ordered by mail on time, failing to ship at all, or failing to provide prompt refunds for unshipped merchandise. The Rule took effect on February 2, 1976. A second rulemaking proceeding in 1993 demonstrated that the delayed shipment and refund problems of the mail order industry were also being experienced by consumers who ordered merchandise over the telephone. The Commission amended the Rule, effective on March 1, 1994, to include merchandise ordered by telephone, including by telefax or by computer through the use of a modem (*e.g.,* Internet sales), and the Rule was then renamed the ''Mail or Telephone Order Merchandise Rule.''

Generally, the MTOR requires a merchant to: (1) Have a reasonable basis for any express or implied shipment representation made in soliciting the sale; (2) ship within the time period promised and, if no time period is promised, within 30 days; (3) notify the consumer and obtain the consumer's consent to any delay in shipment; and (4) make prompt and full refunds when the consumer exercises a cancellation option or the merchant is unable to meet the Rule's other requirements.

The notice provisions in the Rule require a merchant who is unable to ship within the promised shipment time or 30 days to notify the consumer of a revised date and his or her right to cancel the order and obtain a prompt refund. Delays beyond the revised shipment date also trigger a notification requirement to consumers. When the Rule requires the merchant to make a refund and the consumer has paid by credit card, the Rule also requires the merchant to notify the consumer either that any charge to the consumer's charge account will be reversed or that the merchant will take no action that will result in a charge.

Burden Statement

Estimated total annual hours burden: 2,753,000 hours (rounded up to the nearest thousand).

In its 1997 PRA notice and submission to OMB regarding the Rule, FTC staff estimated that 71,560 established companies each spend an average of 50 hours per year on compliance with the Rule, and that approximately 1,000 new industry entrants spend an average of 230 hours (an industry estimate) for compliance measures associated with start-up.[1] 62 FR 63717, Dec. 2, 1997. Thus, the total estimated hours burden was 3,808,000 hours [(71,560 X 50 hours) + (1,000 X 230 hours)].

No provisions in the Rule have been amended or changed in any manner since staff's 1997 PRA submission to OMB. Thus, all of the requirements relating to disclosure and notification remain the same. However, while staff's estimate of average time required by companies to comply with the Rule is unchanged, staff has reduced its estimate of total industry hours based on more current data revealing a smaller industry population. Based on 1999 Statistical Abstract data (the most current industry data available),[2] there are approximately 45,919 existing establishments subject to the Rule.

Staff, however, has increased its estimate of the number of new

[1] Most of the estimated start-up time relates to the development and installation of computer systems geared to more efficiently handle customer orders.

[2] Statistical Abstract of the United States, 119th edition, 1999, U.S. Department of Commerce, Economics and Statistics Administration.

companies that enter the market each year from 1,000 to 1,985. This, too, is based on 1999 Statistical Abstract data. Thus, the current total of affected firms consists of approximately 47,904 established and new companies.

Accordingly, staff estimates total industry hours to comply with the MTOR is 2,752,500 hours [(45,919 X 50 hours) + (1,985 X 230 hours)].

This is a conservative estimate. Arguably much of the estimated time burden for disclosure-related compliance would be incurred even absent the Rule. Representatives from industry trade associations and other knowledgeable individuals have consistently stated that compliance with the Rule is widely regarded by direct marketers as being good business practice. The Rule's notification requirements would be voluntarily initiated by most merchants to meet consumer expectations regarding timely shipment, notification of delay, and prompt and full refunds. Providing consumers with notice about the status of their orders fosters consumer loyalty and encourages repeat purchases, which are important to direct marketers' success. Thus, it appears that much of the time and expense associated with Rule compliance may not constitute ''burden'' under the PRA [3] although the above estimates account for it as such.

In estimating PRA burden, staff considered ''the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency.''5 CFR 1320.3(b)(1). This includes ''developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information.'' 5 CFR 1320.3(b)(1)(iv). Although not expressly stated in the OMB regulation implementing the PRA, the definition of burden arguably includes upgrading and maintaining computer and other systems used to comply with a rule's requirements. Conversely, to the extent that these systems are used in the ordinary course of business independent of the Rule, their associated upkeep would fall outside the realm of PRA ''burden.''

The mail order industry has been subject to the basic provisions of the Rule since 1976 and the telephone order industry since 1994. Thus, businesses have had several years (and some have had decades) to integrate compliance systems into their business procedures. Since 1997 many businesses have upgraded the information management systems they need, in part, to comply with the Rule, and to more effectively track orders. These upgrades, however, mostly were needed to deal with growing consumer demand for merchandise resulting, in part, from increased public acceptance of making purchases over the telephone and, more recently, the Internet.

Accordingly, most companies now maintain records and provide updated order information of the kind required by the Rule in their ordinary course of business. Nevertheless, staff conservatively assumes that the time existing and new companies devote to compliance with the Rule remains the same as in 1997.

Estimated labor costs: $31,136,000, rounded to the nearest thousand.

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. According to the 1999 Statistical Abstract, average payroll for ''non-store catalogue and mail order houses'' and ''non-store direct selling establishments'' rose $0.322 per hour per year between 1991 and 1996. In 1996, average payroll was $10.34 per hour. Assuming average payroll continued to increase $0.322 per hour per year, in 1999 average payroll would have reached $11.31 per hour. Because the bulk of the burden of complying with the MTOR is borne by clerical personnel, staff believes that the average hourly payroll figure for non-store catalogue and mail order houses and non-store direct selling establishments is an appropriate measure of a direct marketer's average labor cost to comply with the Rule. Thus, the total annual labor cost to new and established businesses in 1999 for Rule compliance is approximately $31,136,000 (2,753,000 hours × $11.31/hr.). Relative to direct industry sales, this total is negligible.[4]

Estimated annual non-labor cost burden: $0 or minimal.

The applicable requirements impose minimal start-up costs, as businesses subject to the Rule generally have or obtain necessary equipment for other business purposes, i.e., inventory and order management, and customer relations. For the same reason, staff anticipates printing and copying costs to be minimal, especially given that telephone order merchants have increasingly turned to electronic communications to notify consumers of delay and to provide cancellation options. Staff believes that the above requirements necessitate ongoing, regular training so that covered entities stay current and have a clear understanding of federal mandates. This training, however, would be a small portion of and subsumed within the ordinary training that employees receive apart from that associated with the information collected under the Rule.

John D. Graubert,

Acting General Counsel.

[FR Doc. 00–31337 Filed 12–7–00; 8:45 am]

BILLING CODE 6750–01–M

[3] Under the OMB regulation implementing the PRA, burden is defined to exclude any effort that would be expended regardless of any regulatory requirement. 5 CFR 1320.3(b)(2).

[4] Projecting sales for ''non-store catalogue and mail order houses'' and ''non-store direct selling establishments'' (according to the 1999 Statistical Abstract) to all merchants subject to the MTOR, staff estimates that direct sales to consumers in 1999 would have been $109.45 billion. Thus, the labor cost of compliance by existing and new businesses in 1999 would have amounted to less than .03% of sales.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[60Day–01–07]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506 (c)(2)(A) of the Paperwork reduction Act of 1995, the Center for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

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 for other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

National Exposure Registry—Extension—(OMB No. 0923–0006)

Agency for Toxic Substances and Disease Registry (ATSDR), Centers for Disease Control and Prevention (CDC). The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and its 1986 Amendments, the Superfund Amendments and Re-authorization Act (SARA), to establish and maintain a national registry of persons who have been exposed to hazardous substances in the environment and a national registry of persons with illnesses or health problems resulting from such exposure. ATSDR created the National Exposure Registry (NER) as a result of this legislation in an effort to provide scientific information about potential adverse health effects people develop as a result of low-level, long-term exposure to hazardous substances.

The National Exposure Registry is a program that collects, maintains, and analyzes information obtained from participants (called registrants) whose exposure to selected toxic substances at specific geographic areas in the United States was documented. Relevant health data and demographic information are also included in the NER database. The NER databases furnish the information needed to generate appropriate and valid hypothesis for future activities such as epidemiologic studies. The NER also serves as a mechanism for longitudinal health investigations that follow registrants over time to ascertain adverse health effects and latency periods.

The NER is currently composed of four sub-registries of persons known to have been exposed to specific chemicals: 1,1,1,-Trichloroethane (TCA), Trichloroethylene (TCE), 2,3,7,8-tetrachlorodibenzo-p-dioxin (dioxin), and benzene. In 2001, the NER will establish a new asbestos subregistry.

Participants in each subregistry are interviewed initially with a baseline questionnaire. An identical follow-up telephone questionnaire is administered to participants every three years until the criteria for terminating a specific subregistry have been met. The annual number of participants varies greatly from year to year. Two factors influencing the number of respondents per year are the number of subregistry updates that are scheduled and whether a new subregistry will be established. The addition of the new asbestos subregistry is expected to add approximately 6,000 persons to the NER. This increase is reflected in the following estimated burden table.

The following table is annualized to reflect one new subregistry (asbestos) and five updates for the requested three-year extension of OMB No. 0923–0006. There is no cost to registrants.

Respondents	Number of respondents	Responses per respondent	Average burden per response (in hrs.)	Total annualized burden (in hrs.)
One New Subregistry	2,000	1	0.50	1,000
Five updates	4,927	1	0.42	2,069
Total				3,069

Dated: December 1, 2000.

John Moore,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–31312 Filed 12–07–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–01–06]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the Center for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

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 for other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

NIOSH Research Study for the Prevention of Work-related Musculoskeletal Disorders (MSDs)—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC). The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. There is evidence of causal relationships between physical job stressors (*e.g.*, repetitive or static exertion, forcefulness, awkward postures) and MSDs, and some quantitative information is available on how much rates of MSDs change at varying levels of exposure to each stressor and combination of stressors (exposure-response relationships). Additional information would foster the further development of effective strategies for prevention.

A research project is proposed to conduct a prospective cohort study to quantify the risk for upper limb and low back MSDs at varying levels of exposure to physical job stressors (repetitive, forceful exertion, awkward postures, vibration, manual handling, etc.). This research will involve multiple work sites from the service and manufacturing industries with job tasks that represent a range of exposures to physical job stressors that can result in musculoskeletal disorders of the upper limb (*e.g.,* carpal tunnel syndrome, hand-wrist tendinitis, medial and lateral epicondylitis, hand-arm vibration syndrome (HAVS)) and low back disorders. Because of the limitations of

cross-sectional and retrospective studies, it is widely agreed that a prospective study design is the best approach for the investigation of this problem. Up to 2000 workers will be enrolled into the study and will participate in three annual data collection surveys. The surveys will be comprised of a self-administered questionnaire and standard health tests to identify MSDs, including HAVS. Job tasks will be studied using uniform exposure assessment methods to quantify physical stressors. The study data will be used to test and expand existing guidelines for limiting exposure to physical job stressors, and for developing new guidelines where none exist. The results from this research study will provide practitioners in occupational health critical data that will facilitate their ability to quickly and reliably discriminate job tasks that represent low, moderate and high risk for MSDs among workers employed across different industries. In addition, the results of this study will provide guidance on effective job design to reduce the burden of work-related MSDs. The total estimated annual cost to respondents is $33,190.

Data collection activity	Number of respondents	Number of responses per respondents	Response per hour	Response burden (in hrs)
Questionnaire Administration:				
Core Questionnaire	2,000	3	45/60	4,500
Upper Limb Module	1,000	3	9/60	450
Back Module	700	3	6/60	210
HAVS Module	300	3	15/60	225
Intervention Module	225	4	6/60	90
Physical Examination:				
Upper Limb MSDs	1,000	3	45/60	2,250
Hand-Arm Vibration Syndrome	300	3	2.00	1,800
Total Respondent Burden Hours:				9,525

Dated: December 1, 2000.

John Moore,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–31315 Filed 12–7–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–09–01]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

National Sexually Transmitted Disease Morbidity Surveillance System—Extension—OMB No. 0920–0011 National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC). The reports used for this surveillance system provide ongoing surveillance data on national sexually transmitted disease morbidity. The data are used by health care planners at the national, state, and local (including selected metropolitan and territorial health departments) levels to develop and evaluate STD prevention and control programs. In addition, there are many other users of the data including scientists, researchers, educators, and the media. Sexually transmitted disease (STD) data gathered in these reports are used to produce national statistics published in the annual STD Surveillance Report, MMWR articles, and serve as a progress report to meet objectives in Healthy People 2000: Mid-course Review and 1995 Revisions. It is important to note that these reporting forms are in the process of being phased out and replaced by electronic, line-listed STD data collected in the National Electronic Telecommunications System for Surveillance (NETSS). The total number of burden hours is 644.

Forms	Number of respondents	Number of responses/ respondent	Average burden (in hours)
CDC 73.688*	20	4	1
CDC 73.688**	21	4	1
CDC 73.998	30	12	35/60
CDC 73.2638	30	3	3

* State-level reporting: Respondents for the state-specific CDC 73.688 forms now include 26 state health departments (originally, respondents included 50 states, but 24 states have now discontinued hardcopy reporting and send all STD data as electronic line-listed records through NETSS), seven large city health departments and three outlying areas.

** City-level reporting: The health departments for the 26 states and one of the outlying regions (Puerto Rico) also prepare and submit reports for additional large cities within their jurisdictions.

Dated: December 4, 2000.

Chuck Gollmar,

Acting Associate Director for Policy Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–31314 Filed 12–7–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–10019]

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 Request: New collection; *Title of Information Collection:* Durable Medical Equipment and Prosthetics, Orthotics and Supplies (DMEPOS) Supplier Survey; *HCFA Form Number:* HCFA–10019 (OMB approval #: 0938–NEW); *Use:* This survey is necessary to collect access, quality, and financial performance information from suppliers of durable medical equipment (hospital beds, oxygen, urologic supplies, enteral nutrition, or wound care). The information will be presented to HCFA and to Congress, who will use the results to determine whether the demonstration should be extended to other sites; *Frequency:* Once; *Affected Public:* Business or other for-profit; *Number of Respondents:* 340; *Total Annual Responses:* 340; *Total Annual Burden Hours:* 620.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Date: November 29, 2000.

John P. Burke III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–31256 Filed 12–7–00; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–49]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 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 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this

Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; INTERIOR: Ms. Linda Tribby, Department of the Interior, 1849 C Street, NW., Mail Stop 5512–MIB, Washington, DC 20240; (202) 219–0728; NAVY: Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; VA: Mr. Anatolij Kushnir, Director, Asset & Enterprise Development Service, 181B, Department of Veterans Affairs, 811 Vermont Ave., NW., Room 419, Lafayette Bldg., Washington, DC 20420; (202) 565–5941; (These are not toll-free numbers).

Dated: November 30, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

Title V. Federal Surplus Property Program Federal Register Report for 12/8/00

Suitable/Available Properties

Buildings (by State)

New Jersey

Holmdel Housing Site
Telegraph Hill Road
Holmdel Co: Monmouth NY 07733–
Landholding Agency: GSA
Property Number: 54200040005
Status: Excess
Comment: 12 housing units on 5.59 acres, 1196 sq. ft. each, extreme disrepair
GSA Number: 1–N–NJ–622

Former Hermann House
Tract 307–26
Mt. Salem Rd/Goldsmith Rd
Wantage Township Co: Sussex NJ 07460–
Landholding Agency: Interior
Property Number: 61200040002
Status: Excess
Comment: 1000 sq. ft., most recent use—residential, off-site use only

Former Hermann Garage
Tract 307–26
Mt. Salem Rd/Goldsmith Rd
Wantage Township Co: Sussex NJ 07460–
Landholding Agency: Interior
Property Number: 61200040003
Status: Excess
Comment: 300 sq. ft., off-site use only

New York

Naval Reserve Center
Frankfort Co: Herkimer NY
Landholding Agency: GSA
Property Number: 54200040006
Status: Excess
Comment: 23,800 sq. ft., brick, good condition, most recent use—training center
GSA Number: 1–D–NY–874

Texas

Duplex
Tract 105–71
San Antonio Missions
San Antonio Co: Bexar TX 78214–
Landholding Agency: Interior
Property Number: 61200040007
Status: Unutilized
Comment: 2027 sq. ft., located in Historic District, most recent use—residential, off-site use only

House
Tract 105–71
San Antonio Missions
San Antonio Co: Bexar TX 78214–
Landholding Agency: Interior
Property Number: 61200040008
Status: Unutilized
Comment: 2096 Sq. ft., located in Historic District, most recent use—residential, off-site use only

Rock House
Tract 105–05
San Antonio Missions
San Antonio Co: Bexar TX 78214–
Landholding Agency: Interior
Property Number: 61200040009
Status: Unutilized
Comment: 1966 sq. ft., located in Historic District, most recent use—office, off-site use only

Land (by State)

Pennsylvania

Gwen Site #868
Bonneauville
Smith Road
Gettysburg Co: Adams PA
Landholding Agency: GSA
Property Number: 54200040007
Status: Surplus
Comment: 13.85 acres, most recent use—to support communication
GSA Number: 4–D–PA–0788

Virginia

Land
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77200040034
Status: Unutilized
Comment: 4900 sq. ft. open space

Suitable/Unavailable Properties

Buildings (by State)

Montana

VA MT Healthcare
210 S. Winchester
Miles City Co: Custer MT 59301–
Landholding Agency: VA
Property Number 97200030001
Status: Underutilized
Comment: 18 buildings, total sq. ft. = 123,851, presence of asbestos, most recent use—clinic/office/food production

Unsuitable Properties

Buildings (by State)

Florida

Bldg. 1801
Naval Station Mayport
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number 77200040035
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Secured Area; Extensive deterioration

Bldg. 1802
Naval Station Mayport
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number 77200040036
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Secured Area; Extensive deterioration

Bldg. 1803
Naval Station Mayport
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number 77200040037
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Secured Area; Extensive deterioration

Bldg. 1859
Naval Station Mayport
Mayport Co: Duval FL 32228–
Landholding Agency: Navy
Property Number 77200040038
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway; Secured Area; Extensive deterioration

Massachusetts

Bierlich House
Tract 03–128
Lincoln Co: Middlesex MA 01773–
Landholding Agency: Interior
Property Number 61200040010
Status: Excess
Reason: Extensive deterioration

New Jersey

Bldg. 1042
Naval Air Eng. Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number 77200040039
Status: Unutilized
Reason: Extensive deterioration

Tennessee

Bldg. 487
Bahl House

Great Smoky Mtns.
Indian Camp Creek Co: Sevier TN 37722–
Landholding Agency: Interior
Property Number: 61200040004
Status: Excess
Reason: Extensive deterioration

Bldg. 488
Bahl House
Great Smoky Mtns.
Indian Camp Creek Co: Sevier TN 37722–
Landholding Agency: Interior
Property Number: 61200040005
Status: Excess
Reason: Extensive deterioration

Bldg. 489
Bahl House
Great Smoky Mtns.
Indian Camp Creek Co: Sevier TN 37722–
Landholding Agency: Interior
Property Number: 61200040006
Status: Excess
Reason: Extensive deterioration

[FR Doc. 00–30990 Filed 12–7–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Satellite Land Remote Sensing Data Archive (NSLRSDA) Advisory Committee; Notice of Reestablishment

This notice is published in accordance with section 9 (a) (2) of the Federal Advisory Committee Act (Public Law 92–463), 5 U.S.C. App. (1988). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is reestablishing the National Satellite Land Remote Sensing Data Archive (NSLRSDA) Advisory Committee. NSLRSDA was established by Congress in the Land Remote Sensing Policy Act of 1992 (Public Law 102–555), 15 U.S.C. 5601.

The purpose of the Committee is to advise the U.S. Geological Survey (USGS), Earth Resources Observation Systems (EROS) Data Center (EDC) on guidelines or rules relating to NSLRSDA archival data deposit, maintenance, and preservation as well as access management policies and procedures. The Committee will be responsible for providing advice and consultation on a broad range of technical and policy topics in guiding development of NSLRSDA.

In order for the Secretary to be advised by a broad spectrum of remote sensing data users and producers, committee membership will be composed of 15 members, as follows: two from academia, with one being a laboratory researcher-data user and one a classroom educator; four from government, with one being a Federal data user, one a State data user, one a local data user, and one a science archivist; four from industry, with one being a data management technologist, one a licensed data provider, one a value-added or other data provider, and one an end user; five others, with one being a nonaffiliated individual, one representing a nongovernmental organization, one an international representative, and two at-large, from any data user or producer sector. Expertise in information science, natural science, social science, and policy/law must be represented within the sectors listed above.

The Committee will function solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act. The Charter will be filed under the Act, 15 days from the date of publication of this notice.

Further information regarding the NSLRSDA Advisory Committee may be obtained from the Director, USGS, Department of the Interior, 12201 Sunrise Valley Drive, Reston, Virginia 20192. Certification of reestablishment is published below.

Certification

I hereby certify that the restablishment of the National Satellite Land Remote Sensing Data Archive Advisory Committee is necessary and in the public interest in connection with the performance of duties by the Department of Interior mandated pursuant to the Land Remote Sensing Policy Act of 1992 (Public Law 102–555), 15 U.S.C. 5601.

Dated: November 16, 2000.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 00–31288 Filed 12–7–00; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan for the Proposed Grand Kankakee Marsh National Wildlife Refuge in Northwestern Indiana and Northeastern Illinois

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Intent to prepare a comprehensive conservation plan for the proposed Grand Kankakee Marsh National Wildlife Refuge in northwestern Indiana and northeastern Illinois.

SUMMARY: This notice advises the public that the Fish and Wildlife Service (Service) intends to prepare a comprehensive conservation plan and an associated environmental document for the proposed Grand Kankakee Marsh National Wildlife Refuge. The Service is furnishing this notice in compliance with Service comprehensive conservation plan policy and the National Environmental Policy Act and implementing regulations to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues, opportunities, and concerns for inclusion in the environmental assessment.

DATES: Beginning in November 2000, the Service will solicit information from the public via open houses, workshops, focus groups, and written comments. Special mailings, newspaper articles and radio announcements will inform people of the times and places of public scoping meetings. The dates, times, and places of future scoping meetings will also be posted on the Service's web site at: *http://www.fws.gov/r3pao/planning/.*

FOR FURTHER INFORMATION CONTACT: Address comments and requests for more information to: Project Leader, Grand Kankakee Marsh National Wildlife Refuge, P.O. Box 189, Plymouth, Indiana 46563; telephone: 219–935–3411.

SUPPLEMENTARY INFORMATION: It is Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved comprehensive conservation plan. The plan guides management decisions and identifies refuge goals, objectives, and strategies for achieving refuge purposes. Public input into this planning process is encouraged. The plan will provide other agencies and the public with a clear understanding of the desired future conditions of the refuge and how the Service will implement management strategies.

The purpose(s) of the Grand Kankakee Marsh National Wildlife Refuge (Refuge) is ''for the development, advancement, management, conservation, and protection of fish and wildlife resources'' (Fish and Wildlife Act of 1956) and for ''the conservation of the wetlands of the Nation in order to maintain the public benefits they provide and to help fulfill international obligations contained in various migratory bird treaties and conventions * * *'' (Emergency Wetlands Resources Act of 1986).

The mission for the Refuge is to protect, restore, and manage ecological processes within the Kankakee River Basin that benefit threatened and endangered species, migratory birds, native fish, and diverse flora and fauna populations, while providing, to the extent possible, high quality wildlife-dependent environmental interpretation, education, and recreation experiences that build an understanding and appreciation for these resources, and the role humankind plays in their stewardship.

Dated: November 30, 2000.

Marvin E. Moriarty,

Acting Regional Director.

[FR Doc. 00–31284 Filed 12–7–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved extension to tribal-state gaming compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Extension of the Tribal-State Compact for the conduct of Class III Gaming between the Coushatta Tribe and the State of Louisiana executed on November 16, 2000.

DATES: This action is effective on December 8, 2000.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: December 1, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–31305 Filed 12–7–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–073–00–1990–AC]

Resource Advisory Council Meeting, Butte, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Western Montana Resource Advisory Council will convene on January 9, 2001, from 9:00 a.m. to 4:00 p.m., at the BLM Butte Field Office, 106 North Parkmont, Butte, Montana, 59701.

The topic for the meeting will be a discussion on future issues to be addressed by the Western Montana Resource Advisory Council.

The meeting is open to the public and written comments can be given to the Council. Oral comments may be presented to the Council at 11:30 a.m. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard. Individuals who plan to attend and need further information about the meeting, or who need special assistance, such as sign language or other reasonable accommodations, should contact Jean Nelson-Dean, Resource Advisory Coordinator, at the Butte Field Office, 106 North Parkmont, P.O. Box 3388, Butte, Montana 59702–3388, telephone 406–533–7617.

FOR FURTHER INFORMATION CONTACT: Richard Hotaling, Butte Field Manager, 406–494–5059, or Jean Nelson-Dean at the above address and telephone number.

Dated: December 1, 2000.

Richard Hotaling,

Field Manager.

[FR Doc. 00–31260 Filed 12–7–00; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–ET; MTM 89384; Public Land Order No. 7472]

Withdrawal of Public Land on the Beaverhead River; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws approximately 2,244 acres of public land from surface entry and mining for a period of 50 years for the Bureau of Land Management to protect critical resource values along the Beaverhead River. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: December 8, 2000.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107–6800, 406–896–5052, or Russ Sorensen, BLM Dillon Field Office, 1005 Selway Drive, Dillon, Montana 59725, 406–683–2337.

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 States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, to protect critical resource values along the Beaverhead River:

Principal Meridian, Montana

Tract 1

T. 8 S., R. 10 W.,
  Sec. 35, lots 3 and 4, and NW¼SE¼.
T. 9 S., R. 10 W.,
  Sec. 1, lots 6 to 22, inclusive;
  Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
  Sec. 11, lot 1 and N½, EXCEPTING THEREFROM that tract of land described in the Deed dated June 22, 1946, recorded in Book 110 of Deeds, Page 263, Records of Beaverhead County, Montana;
  Sec. 12, NW¼NE¼, S½NE¼, NW¼, E½SW¼, NW¼SW¼, and SE¼;
  Sec. 13, N½NE¼ and NE¼NW¼, EXCEPTING THEREFROM, Certificate of Survey 889, all those portions conveyed to the State of Montana for State Highway purposes, those portions conveyed for railroad purposes, and those portions taken by the Declaration of Taking dated September 13, 1960.

Tract 2

Certificate of Survey 889, which is a parcel of land located in the NW¼ of sec. 11, sec. 2, and lots 9 and 10 of sec. 1, T. 9 S., R. 10 W.

The area described contains approximately 2,244 acres in Beaverhead County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the

Secretary determines that the withdrawal shall be extended.

Dated: November 28, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–31258 Filed 12–7–00; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–250–01–1220–PA]

Notice of Availability and Comment Period for the Public Review of the Draft, BLM National Off-Highway Vehicle (OHV) Management Strategy

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The BLM is developing a Strategy to improve management of vehicle access on the public lands. In response to the first public comment period, BLM has developed a draft strategy document. A public review copy will be available by December 4, 2000 at BLM's website http://www.blm.gov. All members of the public who submitted comments, or signed in at a ''listening meeting,'' and provided a legible address, will receive a copy of the draft Strategy. Copies will also be available at all BLM offices.

DATES: The draft strategy was released on December 4, 2000 via the internet. Public comments should be submitted to BLM's Washington Office by close of business, January 3, 2001.

ADDRESSES: Return comments in writing to: OHV Comment Manager, Bureau of Land Management, Room 204 LS, 1849 C Street NW, Washington D.C. 20236; via the Internet by clicking on the OHV Strategy Link on *http://www.blm.gov*; or via e-mail at: ohv__comment__manager@blm.gov.

FOR FURTHER INFORMATION CONTACT: Jim Keeler at (202) 452–7771, Rodger Schmitt at (202) 452–7738, or Bob Ratcliffe at (202) 452–5040. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background

I. Public Comment Procedures

If you wish to comment, you may submit comments by any one of several methods:

- You may mail comments to: OHV Comment Manager, Bureau of Land Management, Room 204 LS, 1849 C Street NW, Washington D.C. 20240;
- Comments may be delivered to Room 401, 1620 L Street, NW, Washington, DC, 20236;
- A self-addressed mailer is available in printed copies, being sent to all members of the public who submitted comments during the initial comment period, and additional copies of the mailer are available at all BLM offices:
- You may comment via the Internet by following the Links from the BLM Homepage (*http://www.blm.gov*) or by sending comments to ohv__comment__manager@blm.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please include ''Attn.: OHV Comment Manager, and your name and return address in your Internet message.''

II. Background

Proper management of America's Public lands is vital for the natural ecosystems that they support and for the activities and resources they provide. The use of off-highway vehicles (OHVs) on BLM-administered public lands has increased substantially in recent years, and there has been an increasing concern about the impact of all types of recreational activities, including OHV use, on the 264 million acres of public land resources. The management challenges posed by OHV use in the fast-growing West have become very apparent, especially since the BLM's land-use plans, budgets, and staffing levels have not kept pace with OHV technology and popularity. These factors, along with litigation over OHV management issues, have created the need for a National OHV Management Strategy.

In August 2000, the BLM asked the public for ideas and proposed solutions for improving management of the OHV program. We are again requesting your participation to review this document and give us substantive comments. Because of the immense interest the public has shown in the OHV management on BLM-administered public lands, we are requesting that your comments specifically relate to this document. All comments will be fully considered and evaluated in making any necessary changes in the development of the final National Off-Highway Management Strategy.

Comments, including names and street addresses of respondents will be available for public review at the Bureau of Land Management, Equity Building, Room 204, 1620 L Street NW, Washington, DC from 8:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: December 4, 2000.

Henri Bisson,

Assistant Director Renewal Resources and Planning.

[FR Doc. 00–31283 Filed 12–7–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930; COC–64599]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 12,867 acres of National Forest System lands for 20 years to provide management alternatives. This notice closes this land to location and entry under the mining laws for up to two years. The lands remain open to mineral leasing.

DATES: Comments on this proposed withdrawal must be received on or before March 8, 2001.

ADDRESSES: Comments should be sent to the Colorado State Director, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On November 27, 2000, the Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch 2), subject to valid existing rights:

Sixth Principal Meridian

White River National Forest

T. 5 S., R. 76 W.,
Sec. 3, W½SE¼;

Sec. 10, W½ and W½E½;
Sec. 14, Lots 1 thru 4, inclusive, N½NW¼, SE¼NW¼, and SE¼SW¼;
Sec. 15, lots 1 and 2, W½, N½NE¼, SW¼NE¼, S½SE¼, and NW¼SE¼.
T. 7 S., R. 77 W.,
Sec. 6, W½SW¼NW¼.
T. 6 S., R. 78 W.,
Sec. 14, lots 1, 2, and 3, S½N½, NW¼SW¼, N½SE¼, and W½W½SW¼SE¼;
Sec. 15, S½N½ and S½;
Sec. 16, SE¼SE¼;
Sec. 21, E½ and E½W½;
Sec. 22;
Sec. 23, lots 1 thru 4, inclusive, S½, W½NE¼ and W½E½NE¼;
Sec. 24, lots 4 thru 7, inclusive;
Sec. 25, lots 11 thru 16, inclusive;
Sec. 26, lots 3 thru 12, inclusive, and NW¼;
Sec. 27;
Sec. 28, E½ and E½E½W½;
Sec. 29, E½NW¼SE¼;
Sec. 33, E¼.
T. 7 S., R. 78 W.,
Sec. 3, S½SW¼ and S½N½SW¼;
Sec. 4, E½E½;
Sec. 7, lands in NW¼SW¼ and SE¼SE¼;
Sec. 9, E½E½;
Sec. 10, S½, NW¼, and S½NE¼;
Sec. 11, S½SW¼ and NW¼SW¼;
Sec. 12, NW¼SE¼;
Sec. 13, NW¼NW¼;
Sec. 14, N½;
Sec. 15, N½;
Sec. 16, E½NE¼.
T. 6 S., R. 79 W.,
Sec. 27, W½NE¼NE¼, W½NE¼, N½SE¼NE¼, SW¼SE¼NE¼, E½NW¼, N½SW¼, SW¼SW¼, N½SE¼SW¼, SW¼SE¼SW¼, N½NW¼SE¼, SW½NW½SE¼, and NW¼NE¼SE¼;
Sec. 34, S½NW¼, NW¼NW¼, SW¼NE¼NW¼, and SW¼.
T. 7 S., R. 79 W.,
Sec. 3, NW¼, W½E½SW¼, W½SW¼, and SE¼SE¼SW¼;
Sec. 4, E½;
Sec. 9, E½;
Sec. 10, S½, NW¼, S½NW¼NE¼, SW¼NE¼, NW¼NW¼NE¼ and SW¼SE¼NE¼;
Sec. 11, S½S½, S½N½S½, and N½NW¼SW¼;
Sec. 12, S½S½ and S½N½S½;
Sec. 14, N½N½.
T. 5 S., R. 80 W.,
Sec. 19, lot 3 and 4, and E½SW¼;
Sec. 30 NW¼, W½NE¼, and N½S½.
T. 5 S., R. 81 W.,
Sec. 24, lots 1, 2,and 6 thru 13 inclusive;
Sec. 25, lots 1 thru 8, inclusive.
T. 5 S., R. 82 W.,
Sec. 22, N½NE¼, SW¼NE¼, and NW¼SE¼.

The areas described aggregate approximately 12,867 acres of National Forest System lands in Eagle and Summit Counties. This order excludes any privately owned lands within the described areas.

The purpose of this withdrawal is to allow the Forest Service management alternatives in managing these lands.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal, may present their views in writing to the Colorado State Director. A public meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2). Notice of the time and place of the meeting will be published in the **Federal Register**.

This application will be processed in accordance with the regulations set forth in 43 CFR part 2310.

For a period of two years from the date of publication in the **Federal Register**, this land will be segregated from the mining laws as specified above, unless the application is denied or canceled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage these lands.

Jenny L. Saunders,

Realty Officer.

[FR Doc. 00–31259 Filed 12–7–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Notice is hereby given that a proposed consent decree in the action entitled *United States* v. *Caribe General Electric Products, Inc., et al.,* Civil Action No. 002482CC (D.P.R.), was lodged on November 21, 2000, with the United States District Court for the District of Puerto Rico. The proposed consent decree resolves certain claims of the United States against two potentially responsible parties (''Settling Defendants'') at the Vega Alta Public Supply Wells Superfund Site (the ''Site'') located in Vega Alta, Puerto Rico, under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.* The Settling Defendants include Caribe General Electric Products, Inc. (''Caribe GE'') and Unisys Corporation (''Unisys''). Caribe GE currently has manufacturing operations at the Site, and predecessors of Unisys, the Puerto Rico Card Corporation and the Sperry Rand Corporation, previously had manufacturing operations at the Site.

Under the proposed consent decree, the Settling Defendants will pay $1,119,650, plus interest accruing from July 1, 2000 through the date of payment, in reimbursement of certain past response costs incurred by the United States at the Site. The consent decree includes a covenant not to sue by the United States under Section 107 of CERCLA, 42 U.S.C. 9607, for Past Response Costs, which are defined to include all costs, including, but not limited to, direct and indirect costs, that (i) the Environmental Protection Agency (''EPA'') paid at or in connection with the Site from November 30, 1993 through January 16, 1999, (ii) the Department of Justice, on behalf of EPA, paid at or in connection with the Site from September 30, 1993 through May 31, 1999, and (iii) accrued interest on all such costs.

The Department of Justice will receive, for a period of up to thirty 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, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States* v. *Caribe General Electric Products, Inc., et al.,* DOJ Ref. Number 90–11–3–269/2.

The proposed consent decree may be examined at the offices of the United States Attorney for the District of Puerto Rico, Federal Building, Room 101, Carlos Chandon Avenue, Hato Rey, Puerto Rico 00918 (Contact Isabel Munoz, 787–766–5656). A copy of the proposed consent decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044.

In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.75 (25 cents per page reproduction costs).

Bruce S. Gelber,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–31263 Filed 12–7–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, the Department of Justice gives notice that a proposed consent decree in the case captioned *United States and the State of Indiana* v. *The Dow Chemical Company*, Civil Action No. IP001841–C–T/G (S.D. Ind.), was lodged

with the United States District Court for the Southern District of Indiana, Indianapolis Division, on November 27, 2000, pertaining to the Dow Chemical Site (the ''Site''), located near Zionsville, in Boone County, Indiana. The proposed consent decree would resolve certain civil claims of the United States and the State of Indiana against The Dow Chemical Company (''Dow'') under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9607, for damages for injury to, destruction of, or loss of natural resources resulting from releases of hazardous substances from the Site.

Under the proposed consent decree, Dow would donate an uncontaminated northern portion of the Site—comprising approximately 17 acres of floodplain habitat along Eagle Creek—to the Zionsville Park and Recreation Board (an agency of the Town of Zionsville, Indiana) for the purpose of restoration, replacement, or protection of natural resources similar to those found on other portions of the Site damaged by releases and threatened releases of hazardous substances. Pursuant to a conservation easement and declaration of restrictive covenants enforceable by the State of Indiana's Department of Natural Resources, the Eagle Creek property would be preserved in perpetuity for specified conservation—and recreation-related purposes.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States and the State of Indiana* v. *The Dow Chemical Company*, Civil Action No. IP001841–C–T/G (S.D. Ind.) and DOJ Reference No. 90–11–3–07049.

The proposed consent decree may be examined by appointment at the Office of the United States Attorney for the Southern District of Indiana, 10 West Market Street, Suite 2100, Indianapolis, Indiana 46204 (contact Harold Bickham (317–226–6333)). 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. In requesting copies, please refer to the referenced case and DOJ Reference Number, and enclose a check for $10.25 (41 pages at 25 cents per page reproduction cost), made payable to the Consent Decree Library.

Bruce S. Gelber,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–31262 Filed 12–7–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act and Resource Conservation and Recovery Act

Notice is hereby given that on November 27, 2000, a proposed Consent Decree in *United States* v. *Turtle Mountain Manufacturing Company* (D. North Dakota), Civil Action No. A4–00–139, was lodged with the United States District Court for the District of North Dakota.

This Consent Decree represents a settlement of claims brought against defendant (''Settling Defendant'') in the above-referenced action brought under Section 309 of the Clean Water Act, 33 U.S.C. 1319, for failure to: (1) Comply with general pretreatment requirements for reporting noncompliance and other information, (2) comply with specific discharge limits under the Metal Finishing Point Source Category pretreatment standards, (3) sample and submit storm water discharge monitoring reports as required under its NPDES general permit, and (4) comply with a Section 308 information request requiring monthly monitoring and reporting of process wastewater discharges. Additionally, the proposed Consent Decree represents a settlement of claims against Settling Defendant under Section 3008 of the Resource Conservation and Recovery Act, 42 U.S.C. 6928, for failure to comply with numerous regulations pertaining to storage and management of hazardous waste and used oil applicable to generators of such items.

Under the proposed settlement, the Settling Defendant would be required to pay a civil penalty of $100,000 for violations of the Clean Water Act, and Resource Conservation and Recovery Act. The proposed settlement also requires Settling Defendant to immediately comply with all applicable general pretreatment provisions, metal finishing point source pretreatment requirements and its storm water NPDES general permit for its metal parts manufacturing facility near Belcourt, North Dakota. Additionally, the proposed settlement further requires Settling Defendant to immediately comply with all applicable requirements for generators of hazardous waste and used oil from its manufacturing facility.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Turtle Mountain Manufacturing Company* (D. North Dakota), D.J. Ref. 90–7–1–06492.

The Consent Decree may be examined at the Office of the United States Attorney, 655 1st Avenue, North, Suite 250, Fargo, North Dakota 58102, and at U.S. EPA Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. A copy of the Consent Decree may be also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $9.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce Gelber,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–31261 Filed 12–7–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal

statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

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

Maine
ME000001 (Feb. 11, 2000)
ME000002 (Feb. 11, 2000)
ME000003 (Feb. 11, 2000)
ME000004 (Feb. 11, 2000)
ME000005 (Feb. 11, 2000)
ME000006 (Feb. 11, 2000)
ME000007 (Feb. 11, 2000)
ME000008 (Feb. 11, 2000)
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Michigan
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MI000075 (Feb. 11, 2000)

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OK000018 (Feb. 11, 2000)
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TX000081 (Feb. 11, 2000)

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WA000008 (Feb. 11, 2000)
WA000011 (Feb. 11, 2000)
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CA000041 (Feb. 11, 2000)
Nevada
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NV000005 (Feb. 11, 2000)
NV000006 (Feb. 11, 2000)
NV000007 (Feb. 11, 2000)
NV000009 (Feb. 11, 2000)

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 years, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 30th day of November 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–31019 Filed 12–7–00; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–140)]

NASA Advisory Committee; Notice of Establishment

AGENCY: National Aeronautics and Space Administration (NASA).

The Administrator of the National Aeronautics and Space Administration has determined that the establishment of a Planetary Protection Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed upon NASA by law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Planetary Protection Advisory Committee.

Purpose and Objective: Primarily to advise on Agency programs, policies, plans and other matters pertaining to NASA's responsibilities for planetary protection. These responsibilities for planetary protection are outlined in NASA Policy Directive 8020.7E, ''Biological Contamination Control for Outbound and Inbound Planetary Spacecraft.'' The Committee will provide a forum for advice on interagency coordination and intergovernmental planning related to planetary protection. Additionally, the Committee will review and recommend appropriate planetary protection categorizations for all bodies of the solar system to which spacecraft will be sent.

Balanced Membership Plans: The Committee will consist of 15 to 20 members selected to ensure a balanced representation among industry, academia, and Government with recognized knowledge and expertise in scientific, technological, and programmatic fields relevant to planetary protection. These programmatic fields include: astrobiology, planetary materials and environments, engineering risk analysis, risk management, risk communication, microbial ecology, molecular biology, biological containment, science/technology, science ethics, applicable law, and public health.

Duration: Continuing.

Responsible NASA Official: Dr. John D. Rummel, Planetary Protection Officer, Office of Space Science, National Aeronautics and Space Administration, 300 E Street, SW., Washington, DC 20546, telephone 202/358–0702.

Dated: December 4, 2000.

Beth M. McCormick,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–31286 Filed 12–7–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules for Electronic Copies Previously Covered by General Records Schedule 20; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal.

This request for comments pertains solely to schedules for electronic copies of records created using word processing and electronic mail where the recordkeeping copies are already scheduled. (Electronic copies are records created using word processing or electronic mail software that remain in storage on the computer system after the recordkeeping copies are produced.)

These records were previously approved for disposal under General Records Schedule 20, Items 13 and 14. The agencies identified in this notice have submitted schedules pursuant to NARA Bulletin 99–04 to obtain separate disposition authority for the electronic copies associated with program records and administrative records not covered by the General Records Schedules. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a). To facilitate review of these schedules, their availability for comment is announced in Federal Register notices separate from those used for other records disposition schedules.

DATES: Requests for copies must be received in writing on or before January 22, 2001. On request, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums concerning a proposed schedule. These, too, may be requested. Requesters will be given 30 days to submit comments.

Some schedules submitted in accordance with NARA Bulletin 99–04 group records by program, function, or organizational element. These schedules do not include descriptions at the file series level, but, instead, provide citations to previously approved schedules or agency records disposition manuals (see Supplementary Information section of this notice). To facilitate review of such disposition requests, previously approved schedules or manuals that are cited may be requested in addition to schedules for

the electronic copies. NARA will provide the first 100 pages at no cost. NARA may charge $.20 per page for additional copies. These materials also may be examined at no cost at the National Archives at College Park (8601 Adelphi Road, College Park, MD).

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to *records.mgt@arch2.nara.gov.*

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports and/or copies of previously approved schedules or manuals should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: *records.mgt@arch2.nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Routine administrative records common to most agencies are approved for disposal in the General Records Schedules (GRS), which are disposition schedules issued by NARA that apply Government-wide.

On March 25, 1999, the Archivist issued NARA Bulletin 99–04, which told agencies what they must do to schedule electronic copies associated with previously scheduled program records and certain administrative records that were previously scheduled under GRS 20, Items 13 and 14. On December 27, 1999, the Archivist issued NARA Bulletin 2000–02, which suspended Bulletin 99–04 pending NARA's completion in FY 2001 of an overall review of scheduling and appraisal. On completion of this review, which will address all records, including electronic copies, NARA will determine whether Bulletin 99–04 should be revised or replaced with an alternative scheduling procedure. However, NARA will accept and process schedules for electronic copies prepared in accordance with Bulletin 99–04 that are submitted after December 27, 1999, as well as schedules that were submitted prior to this date.

Schedules submitted in accordance with NARA Bulletin 99–04 only cover the electronic copies associated with previously scheduled series. Agencies that wish to schedule hitherto unscheduled series must submit separate SF 115s that cover both recordkeeping copies and electronic copies used to create them.

In developing SF 115s for the electronic copies of scheduled records, agencies may use either of two scheduling models. They may add an appropriate disposition for the electronic copies formerly covered by GRS 20, Items 13 and 14, to every item in their manuals or records schedules where the recordkeeping copy has been created with a word processing or electronic mail application. This approach is described as Model 1 in Bulletin 99–04. Alternatively, agencies may group records by program, function, or organizational component and propose disposition instructions for the electronic copies associated with each grouping. This approach is described as Model 2 in the Bulletin. Schedules that follow Model 2 do not describe records at the series level.

For each schedule covered by this notice the following information is provided: name of the Federal agency and any subdivisions requesting disposition authority; the organizational unit(s) accumulating the records or a statement that the schedule has agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency; the control number assigned to each schedule; the total number of schedule items; the number of temporary items (the record series proposed for destruction); a brief description of the temporary electronic copies; and citations to previously approved SF 115s or printed disposition manuals that scheduled the recordkeeping copies associated with the electronic copies covered by the pending schedule. If a cited manual or schedule is available from the Government Printing Office or has been posted to a publicly available Web site, this too is noted.

Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Agricultural Marketing Service (N9–136–01–1, 24 items, 24 temporary items). Electronic copies of documents created using electronic mail and word processing that relate to overall agency administrative management and to the programs and activities of the agency's Cotton Division, Dairy Division, Fruit and Vegetable Division, Livestock and Seed Division, Poultry Division, Science and Technology Division, Tobacco Division, and Transportation and Marketing Division. Included are electronic copies associated with such records as correspondence files, directives, publications, research studies, purchase program dockets, and commodity procurement files. This schedule follows Model 2 as described in the Supplementary Information section of this notice. Recordkeeping copies of these files are included in the agency's Records Management Handbook under file codes 6000–9999.

2. Department of Health and Human Services, Agency for Healthcare Research and Quality (N9–510–01–1, 70 items, 70 temporary items). Electronic copies of documents created using electronic mail and word processing that relate to agency administrative and program activities. Included are electronic copies associated with such records as subject files of the Administrator and Deputy Director, equal employment opportunity case files, interagency agreements, delegations of authority, grant files, reports to Congress, directives, strategic planning files, task force and committee minutes, publications, press releases, and reading files. This schedule follows Model 1 as described in the Supplementary Information section of this notice in that it adds disposition instructions for the electronic copies associated with individual file series of records. However, it only includes the titles, not the series descriptions, of the recordkeeping files. Recordkeeping copies of these files are included in Disposition Job N1–510–94–1, which may be requested in accordance with the procedures outlined in the Summary section of this notice.

Dated: November 30, 2000.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 00–31237 Filed 12–7–00; 8:45 am]

BILLING CODE 7515–01–U

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Institute of Museum and Library Services, Office of Library Services; Submission for OMB Review, Comment Request; Evaluation Professional Services Program

AGENCY: Institute of Museum and Library Services.

ACTION: Notice.

SUMMARY: The Institute of Museum Services has submitted the following public information request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35) Currently, the Institute of Museum and Library Services is soliciting comment concerning a new collections entitled, Evaluation Professional Services Program.

A copy of the proposed instrument, with applicable supporting documentation, may be obtained by calling the Institute of Museum and Library Services, Director Office of Research and Technology, Rebecca Danvers (202) 606–2478. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–8636.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), by (insert 30 days from publication).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaulate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Background

Type of Review: New.

Agency: Institute of Museum and Library Services.

Title: Evaluation Professional Services Program.

OMB Number: N/A.

Affected Publics: museums.

Total Respondents: 400.

Frequency: once.

Total Responses: 400.

Average Time per Response: 10–45 minutes.

Estimated Total Burden Hours: 78 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, Director Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

Dated: December 4, 2000.

Mamie Bittner,

Director Public and Legislative Affairs.

[FR Doc. 00–31295 Filed 12–7–00; 8:45 am]

BILLING CODE 7036–01–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 and Time: January 24 and 25, 2001, 8 a.m. to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Alison Flatau, Program Director, Dynamic Systems and Control, Sensor Technologies for Civil and Mechanical Systems, National Science Foundation, 4201 Wilson Blvd, Room 545, Arlington, VA 22230. Telephone: (703) 292–8360.

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'01 Dynamic Systems and Control Individual Investigator Award (IIA) Review Panel proposals as part of the selection process for awards.

Reason for Closing: The proposal 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: December 1, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–31265 Filed 12–7–00; 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 and Time: January 29 and 30, 2001, 8 a.m. to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Alison Flatau, Program Director, Dynamic Systems and Control, Sensor Technologies for Civil and Mechanical Systems, National Science Foundation, 4201 Wilson Blvd, Room 545, Arlington, VA 22230. Telephone: (703) 292–8360.

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'01 Dynamic Systems and Control Individual Investigator Award (IIA) Review Panel proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 1, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–31266 Filed 12–7–00; 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 and Time: January 24, 2001, 8 a.m. to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Alison Flatau, Program Director, Dynamic Systems and Control, Sensor Technologies for Civil and Mechanical Systems, National Science Foundation, 4201 Wilson Blvd., Room 545, Arlington, VA 22230. Telephone: (703) 292–8360.

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'01 Dynamic Systems and Control Individual Investigator Award (IIA) Review Panel proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 1, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–31267 Filed 12–7–00; 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 and Time: January 21 and 22, 2001, 8 a.m., to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Alison Flatau, Program Director, Dynamic Systems and Control, Sensor Technologies for Civil and Mechanical Systems, National Science Foundation, 4201 Wilson Blvd., Room 545, Arlington, VA 22230. Telephone: (703) 292–8360.

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'01 Dynamic Systems and Control Individual Investigator Award (IIA) Review Panel proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries and personal information concerning individuals associated with the proposals. These matter are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 1, 2000.

Karen J. York,

Committee Management Office.

[FR Doc. 00–31268 Filed 12–7–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Computing-Communications Research; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings of the Special Emphasis Panel in Computing-Communications Research (1192):

Dates/Times: December 11, 2000; 8 a.m.–5 p.m.; December 15, 2000; 8 a.m.–5 p.m.; and December 18, 2000; 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Contact Person: Mukesh Singhal, National Science Foundation, 4201 Wilson Boulevard, Room 1145, Arlington, VA 22230. Telephone: (703) 292–8918.

Type of Meeting: Closed.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate OSC CAREER proposals as a part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 1, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–31269 Filed 12–7–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: January 6, 2001, 8:00 am–5:30 pm.

Place: Hyatt Regency Westshore Hotel, Tampa, FL.

Type of Meeting: Closed.

Contact Person: Dr. Ronald Rardin, Program Directors, DMII, (703) 292–8330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Unsolicited proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: December 1, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–31271 Filed 12–7–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Oversight Council for the International Arctic Research Center; 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: Oversight Council for the International Arctic Research Center (9535).

Date/Time: January 4, 2001, 9 a.m. to 4 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 320, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Charles Myers, National Science Foundation, 4201 Wilson Blvd., Suite 755, Arlington, VA 22230. Telephone: (703) 292–7434.

Purpose of Meeting: To provide advice and recommendations concerning further support for the International Arctic Research Center (IARC).

Agenda: To review and evaluate the current and proposed activities of the IARC.

Reason for Closing: The information being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the IARC. These matters are exempt under 5 U.S.C. 552b(c), (4), and (6) of the Government in the Sunshine Act.

Dated: December 1, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–31270 Filed 12–7–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–528, STN 50–529, and STN 50–530]

In the Matter of El Paso Electric Company (Palo Verde Nuclear Generating Station, Units 1, 2, and 3); Order Approving Application Regarding Proposed Corporate Restructuring and Approving Conforming Amendments

I

El Paso Electric Company (EPE) holds minority ownership interests (both owned and leased) in Palo Verde Nuclear Generating Station (Palo Verde), Units 1, 2, and 3, and in connection therewith is a holder of Facility Operating Licenses Nos. NPF–41, NPF–51, and NPF–74 for Palo Verde. The facility is located in Maricopa County, Arizona. Other co-licensees for Palo Verde are Arizona Public Service Company (APS) (owner or lessee of 29.1 percent share of each of the three units), Salt River Project Agricultural Improvement and Power District (owner of a 17.49 percent share), Public Service Company of New Mexico (owner of a 10.2 percent share), Southern California Edison Company (owner of a 15.8 percent share), Southern California Public Power Authority (owner of a 5.91 percent share), and Los Angeles Department of Water and Power (owner of a 5.7 percent share). By letter dated September 29, 2000, the Commission approved the indirect transfer of the Public Service Company of New Mexico licenses to a new holding company, and a change of its name to Manzano Energy Corporation. The name change will become effective at the time the restructuring of Public Service Company of New Mexico is completed. APS is the licensed operator of the Palo Verde units. The remaining licensees hold possession-only licenses.

II

Pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.80, EPE filed an application dated July 6, 2000, as supplemented by letter dated July 7, 2000, from counsel for EPE, requesting approval of the indirect transfer of the Palo Verde licenses, to the extent held by EPE, to a new holding company, El Paso Electric Incorporated. El Paso Electric Incorporated was created to implement the public utility restructuring requirements of the New Mexico Electric Utility Industry Restructuring Act of 1999, SB 428, NMSA 1978, §§ 62–3A–1 through 23 (1999). The proposed restructuring involves the formation of El Paso Electric Incorporated, EPE becoming a direct subsidiary of El Paso Electric Incorporated, and a change in EPE's name to MiraSol Generating Company. By application dated October 3, 2000, APS requested approval, pursuant to 10 CFR 50.90, of proposed conforming amendments to reflect in the Palo Verde licenses the name change of EPE to MiraSol Generating Company that will occur in connection with the restructuring. APS will retain its existing ownership interest in, and remain the licensed operator of, Palo Verde, after the restructuring of EPE, and is not otherwise involved in the restructuring. Similarly, none of the other co-licensees are involved in the restructuring of EPE. No physical changes to the facility or operational changes are proposed in the applications filed by EPE and APS. Notice of the applications and an opportunity for hearing was published in the **Federal Register** on November 2, 2000 (65 FR 65885, as corrected at 65 FR 70637). No written comments or hearing requests were filed.

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information provided by EPE in its application, the supplement thereto, and other information before the Commission, the NRC staff has determined that the proposed restructuring will not affect the qualifications of EPE to hold the licenses referenced above to the same extent now held by EPE, and that the indirect transfer of the licenses, to the extent effected by the restructuring, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR part 51 of the Commission's regulations and all applicable requirements have been satisfied. These findings are supported by a safety evaluation dated December 4, 2000.

III

Accordingly, pursuant to sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 USC 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *It Is Hereby Ordered* that the application regarding the proposed restructuring of EPE and indirect license transfers is approved, subject to the following conditions:

1. MiraSol Generating Company shall continue to provide decommissioning funding assurance, to be held in its decommissioning trusts for Palo Verde Nuclear Generating Station, Units 1, 2, and 3, from the date of the indirect license transfers, as represented in the respective July 6, 2000, application. In addition, MiraSol Generating Company will ensure that its contractual arrangements with its transmission and distribution affiliate to obtain necessary decommissioning funds for Palo Verde through nonbypassable charges will be established and maintained until the decommissioning trust is fully funded.

2. MiraSol Generating Company shall enter into an agreement with its transmission and distribution affiliate that shall require the deposit of funds collected for decommissioning funding from wires charges into MiraSol Generating Company's decommissioning trust accounts. A copy of the agreement shall be forwarded to the NRC before the completion of the proposed restructuring of EPE.

3. MiraSol Generating Company shall take all necessary steps to ensure that the decommissioning trusts are maintained in accordance with the July 6, 2000, application, as supplemented, and the requirements of this Order approving the respective indirect transfers, and consistent with the safety evaluation supporting this Order.

4. MiraSol Generating Company shall inform the Director of the Office of Nuclear Reactor Regulation, within 30 days of approval by, respectively, the Texas Public Utilities Commission and the New Mexico Public Regulation Commission, of the nonbypassable charge mechanism of recovering decommissioning costs. Within such 30-day period, MiraSol Generating Company shall state the total decommissioning costs subject to nonbypassable charge recovery and the schedule for funding decommissioning costs.

It Is Further Ordered that, consistent with 10 CFR 2.1315(b), license amendments, as indicated in Enclosure 2 to the cover letter forwarding this Order, to reflect the subject restructuring action and conditions of this Order are approved. The amendments shall be issued and made effective at the time the proposed restructuring action is completed.

This Order is effective upon issuance.

For further details with respect to this action, see the application dated July 6, 2000, supplemental submittals dated July 7 and October 3, 2000, and the safety evaluation dated December 4, 2000, which are available for public inspection at the Commission's Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link on the NRC Web site *(http://www.nrc.gov).*

Dated at Rockville, Maryland, this 4th day of December 2000.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–31294 Filed 12–7–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 72–9 and 72–20]

Department of Energy; Fort St. Vrain and Three Mile Island, Unit 2, Independent Spent Fuel Storage Installations; Notice of Docketing of Materials Licenses SNM–2504 and SNM–2508 Amendment Applications

By letter dated August 30, 2000, the U.S. Department of Energy (DOE) submitted an application to the Nuclear Regulatory Commission (NRC or the Commission), in accordance with 10 CFR Part 72, requesting the amendment of the Fort St. Vrain (FSV) and Three Mile Island, Unit 2 (TMI–2) independent spent fuel storage installation (ISFSI) licenses, SNM–2504 and SNM–2508, respectively. The FSV ISFSI is located at Weld County, Colorado, and the TMI–2 ISFSI is located at Idaho Falls, Idaho. In accordance with the requirements of 10 CFR 73.21(h), DOE is seeking Commission approval to use a new plan for safeguards information protection for both ISFSIs. The requested changes do not appear to affect the design, operation, maintenance, or surveillance of the ISFSIs.

These applications were docketed under 10 CFR Part 72; the ISFSI Docket No. for FSV is 72–9 and the Docket No. for TMI–2 is 72–20 and will remain the same for these actions. The amendment of both ISFSI licenses are subject to the Commission's approval and may take place under separate actions.

The Director, Office of Nuclear Material Safety and Safeguards, or his designee, will determine if the amendments present a genuine issue as to whether public health and safety will be significantly affected and may issue either a notice of hearing or a notice of proposed action and opportunity for hearing in accordance with 10 CFR 72.46(b)(1) or take immediate action on the amendments in accordance with 10 CFR 72.46(b)(2).

For further details with respect to this application, see the application dated August 30, 2000, which is available for public inspection at the Commission's Public Document Room, One White Flint North Building, 11555 Rockville Pike, Rockville, MD, or from the publicly available records component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/NRC/ADAMS/index.html* (the Public Electronic Reading Room).

Dated at Rockville, Maryland, this 30th day of November 2000.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–31293 Filed 12–7–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27288]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

December 1, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 26, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 26, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

National Fuel Gas Company, et al. (70–9525)

National Fuel Gas Company (''NFG''), 10 Lafayette Square, Buffalo, New York 14203, a registered holding company under the Act, and its nonutility subsidiaries National Fuel Gas Supply Corporation (''Supply''), 10 Lafayette Square, Buffalo, New York 14203; National Fuel Resources, Inc. (''Resources''), 165 Lawrence Bell Drive, Suite 120, Williamsville, New York 14221; Seneca Resources Corporation (''Seneca''); and Upstate Energy, Inc. (''Upstate Energy,'' and together with Supply, Resources and Seneca, the ''Nonutility Subsidiaries''), both located at 1201 Louisiana Street, Suite 400, Houston, Texas 77002, have filed a post-effective amendment, under sections 9(a) and 10 of the Act and rule 54 under the Act, to a previously filed application.

By order dated December 16, 1999 (Holding Co. Act Release No. 27144) (''Prior Order''), the Commission authorized NFG through its Nonutility Subsidiaries, to acquire the equity and debt securities of one or more companies that are engaged in, or that are formed to engage in, certain categories of nonutility gas-related operations outside the United States (''Foreign Energy Affiliates'') through December 31, 2003 (''Authorization Period''). Specifically, the Commission authorized NFG and the Nonutility Subsidiaries to invest up to $300 million (''Investment Limitation'') during the Authorization Period in the securities of Foreign Energy Affiliates. NFG and the Nonutility Subsidiaries now request that the Investment Limitation be increased to $800 million.

In accordance with the Prior Order, Seneca formed National Fuel Exploration Corporation (''Exploration''), which is NFG's only

Foreign Energy Affiliate to date. NFG has invested approximately $231.6 million in the activities of Exploration. NFG and the Nonutility Subsidiaries state that they intend to use the increased investment authority as needed to enable development of Exploration's assets, which include 1.8 million undeveloped acres in Alberta, Saskatchewan, and Manitoba, Canada.

Allegheny Energy, Inc., et al. (70–9627)

Allegheny Energy, Inc. (''Allegheny''), a public utility holding company registered under the Act, Allegheny Energy Service Corporation, a service subsidiary of Allegheny, and the Potomac Edison Company (''Potomac Edison''), a wholly owned public utility electric subsidiary of Allegheny, all located at 10435 Downsville Pike, Hagerstown, Maryland 21740, and Allegheny Energy Supply Company, LLC (''Genco''), a wholly owned nonutility subsidiary of Allegheny located at R.R. 12, P.O. Box 1000, Roseytown, Pennsylvania 15601 (collectively, ''Applicants''), have filed a post-effective amendment to an application-declaration under sections 9(a), 10, and 12(d) and rule 54 of the Act.

By order dated July 31, 2000 (Holding Co. Act Release No. 27205) (''Prior Order''), Potomac Edison, was authorized, among other things, to transfer Genco its undivided ownership interests in certain jointly held and certain wholly owned generating facilities and related fixed assets (''Generating Assets''), consisting of: a 25% interest in the Fort Martin Power station located in Maidsville, West Virginia; a 33% interest in the Albright Power Station located in Albright, West Virginia; a 32.76% interest in the Harrison Power Station located in Shinnston, West Virginia; a 20% interest in the Hatfield's Ferry Power Station located in Masontown, Pennsylvania; a 30% interest in the Pleasants Power Station, located in Saint Mary's, West Virginia; a 100% interest in the R. Paul Smith Station and R. Paul Smith Ash Basin both located in Williamsport, Maryland; and a 100% interest in the Millville, Dam #4 and Dam #5 hydro stations located in West Virginia.

Applicants request authority for Potomac Edison to lease from Genco all or a portion of the ownership interests in the Generating Assets previously sold by Potomac Edison to Genco in accordance with the Prior Order. Applicants state that the lease agreement will enable Potomac Edison to minimize certain taxes imposed by the state of West Virginia in connection with the distribution of electricity by Potomac Edison in that state. The amounts payable to Potomac Edison under the lease agreement will be computed at cost.

Madison Gas and Electric Company (70–9791)

Madison Gas and Electric Company (''MG&E''), a Wisconsin electric and gas utility company, currently not subject to the Act, 133 South Blair Street, P.O. Box 1231, Madison, Wisconsin 53701–1231, has filed an application (''Application'') under sections 9(a)(2) and 10 of the Act.

MG&E is requesting approval of a proposed transaction in which: (i) MG&E will transfer ownership and control over its transmission assets to American Transmission Company, LLC, (''Transco''), a Wisconsin limited liability company formed on June 12, 2000, that will be a single-purpose transmission company; (ii) MG&E will receive, in exchange, member units of Transco in proportion to the value of the transmission assets transferred; (iii) MG&E will purchase Class A shares of ATC Management, Inc., (''Corporate Manager''), a Wisconsin corporation formed on June 12, 2000, in proportion to the value of the transmission assets transferred; and (iv) MG&E will purchase one Class B share of the Corporate Manager.

MG&E is a Wisconsin corporation that generates, transmits and distributes electricity in Dane County, Wisconsin, in an area covering approximately 250 square miles. MG&E also purchases, transports and distributes natural gas throughout a 1,325 square mile area in Dane and six other Wisconsin counties. MG&E is a ''public utility'' under section 2(a)(5) of the Act and is both an ''electric utility'' and a ''gas utility'' under sections 2(a)(3) and (4) respectively.

In 1999, the state of Wisconsin enacted legislation that facilitates the formation of Transco, which will be a single-purpose transmission company. All Transco participants will ultimately own direct or indirect interests in the Transco and the Manager in proportion to the value of the transmission assets each participant contributes to the Transco.

For the purpose of establishing relative shares of member units that contributing utilities will receive, the transferred transmission assets will be valued at their ''Contribution Value,'' defined as original cost, less accumulated depreciation (as adjusted on a dollar-for-dollar basis for deferred taxes), excess deferred taxes and deferred investment tax credits. The resulting shares will then be adjusted based on various factors and the level of participation by transmission-dependent utilities which may acquire member units in Transco for cash based upon their 1999 Wisconsin load-ratio shares. It is expected that MGE's Contribution Value at December 31, 2000, exclusive of land rights, will be approximately $40.1 million, and its initial interest in the Transco will approximate 5.31%. These ownership percentages may fluctuate based on various factors, including the number of participants in the Transco. MG&E is currently not a holding company as defined in section 2(a)(7) of the Act, and as MG&E is not expected to own an interest of 10% or more in either the Transco or the Corporate Manager, it is not expected that MG&E will become a holding company as a result of the proposed transaction.

It is expected that the participants in Transco and the Corporate Manager (''Member Utilities'') will include, in addition to MG&E, (i) WPS Resources Corporation (''WPSC''), an exempt public utility holding company; (ii) Wisconsin Public Service Corporation, one of WPSC wholly-owned public utility subsidiaries; (iii) Wisconsin Power and Light Company (''WPL''), a public utility and an exempt public utility holding company; (iv) South Beloit Water, Gas and Electric Company (a wholly owned public utility subsidiary of WPL); (v) Wisconsin Energy Corporation (''WEC''), an exempt public utility holding company; (vi) Wisconsin Electric Power Company, a wholly owned subsidiary of WEC; (vii) Edison Sault Electric Company, a wholly owned utility subsidiary of WEC; and (viii) Wisconsin Public Power, Inc., a municipal electric utility company owned by thirty Wisconsin municipalities. All the Member Utilities will ultimately own a direct or indirect interest in Transco and Corporate Manager in proportion to the value of the transmission assets each transfers to Transco. Other transmission-owning utilities may, in the future, decide to become Member Utilities. The Application seeks approval of a transaction parallel to that described in applicants filed by Wisconsin Energy Corporation, *et al.* (SEC File No. 70–9741), and WPS Resources Corporation, *et al.* (SEC File 70–9767), notices of which were issued in Holding Co. Act Release No. 27278 (November 17, 2000); by Alliant Energy Corporation, *et al.* (SEC File No. 70–9735), notice of which was issued in Holding Co. Act Release No. 27285 (November 27, 2000).

MG&E and the other Member Utilities intent to transfer their transmission assets to Transco on or about January 1,

2001 (''Operations Date''). The transmission assets that MGE plans to transfer to Transco comprise (i) transmission lines (including towers, poles, and conductors); (ii) transformers providing transformation within the bulk transmission system and between the bulk and area transmission systems; and (iii) substations that solely provide a transmission function. For purposes of establishing relative shares, the transferred transmission assets will be valued at their contribution value (''Contribution Value''), which is defined as original cost less accumulated depreciation, as adjusted on a dollar-for-dollar basis for deferred taxes, excess deferred taxes and deferred investment credits. Transco is expected to transfer operational control of its assets to the Midwest Independent System Operator by November 1, 2001.

Corporate Manager will manage Transco and will also initially hold a small portion, less than 1%, of Transco's membership interests. It will employ all personnel necessary to operate Transco and all of its expenses will be treated as Transco expenses.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31272 Filed 12–7–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24781; 812–12150]

Nations Fund Trust, et al.; Notice of Application

December 1, 2000.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 12(d)(1)(G)(i)(II) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit funds of funds relying on section 12(d)(1)(G) of the Act to invest in certain securities and other financial instruments.

APPLICANTS: Nations Fund Trust (''NFT''), Nations Fund, Inc. (''NFI''), Nations Reserves (''NR''), Nations Funds Trust (''NFST''), Nations Annuity Trust (''NAT'') and Nations Master Investment Trust (''NMIT'') (individually, a ''Company'' and collectively, the ''Companies''), and Banc of America Advisors, Inc. (together with any successor, ''BAAI'').[1]

FILING DATES: The application was filed on June 27, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 26, 2000, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, c/o Robert B. Carroll, Esq., Bank of America Corporation, One Bank Of America Plaza, NC1–002–33–31, 101 South Tryon Street, Charlotte, NC 28255.

FOR FURTHER INFORMATION CONTACT: Jean. E. Minarick, Senior Counsel, at (202) 942–0527, or Christine Y. Greenless, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicant's Representation

1. The Companies are all members of the Nations Funds, a family of funds currently including more than seventy funds. Each Company is an open-end management investment company registered under the Act and is organized as a Massachusetts or Delaware business trust, or a Maryland corporation. BAAI serves as the investment adviser to each Fund (as defined below), except the Funds which are ''feeder'' funds that invest all of their assets in the portfolios of NMIT and have no direct investment advisory arrangement. Nations Equity Income Fund is a series of NFI. Nations Equity Income Fund seeks to provide current income and growth of capital by investing in companies with above-average dividend yields. Nations Convertible Securities Fund is a series of NR. Nations Convertible Securities Fund seeks to provide investors with a total investment return, comprised of current income and capital appreciation, consistent with prudent investment risk.

2. Nations Equity Income Fund will invest in shares of Nations Convertible Securities Fund, and will invest directly in certain debt and equity securities or other financial instruments (''Other Securities'').[2] Applicants request that the relief also apply to (a) any existing or future registered open-end management investment company advised by BAAI, or any entity controlling, controlled by, or under common control with BAAI (also a ''Company''), and (b) any existing of future series of any Company advised by BAAI, or any entity controlling, controlled by, or under common control with BAAI (individually, a ''Fund'' and collectively, the ''Funds'') that is a series of, or part of the same ''group of investment companies'' (as defined in Section 12(d)(1)(G)(ii) of the Act) as NFT, NFI, NR, NFST, NAT and NMIT (any such Company or Fund that invests in an Underlying Fund (as defined below) is an ''Upper Tier Fund''). Any registered open-end management investment company (or series thereof) or registered unit investment trust whose shares are purchased by an Upper Tier Fund and which is part of the same group of investment companies, as defined in section 12(d)(1)(G)(ii) of the Act, as the Upper Tier Fund is an ''Underlying Fund.''[3]

3. Applicants state that BAAI may, but is not required to, reduce or waive advisory fees relating to an Upper Tier Fund's investment in shares of an Underlying Fund. Applicants further state that Nations Equity Income Fund intends to invest only in Primary A Shares of the Nations Convertible Securities Fund, which are not subject to front-end or contingent deferred sales

[1] The term ''successor'' is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization or other type of restructuring within the group of entities controlled by Bank of America Corporation.

[2] These investments will not include shares of any registered investment companies that are not in the same group of investment companies as the Companies.

[3] All existing investment companies that currently intend to rely on the order are named as applicants. Any registered open-end management investment company that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

charges, distribution fees, or shareholder servicing fees.

Applicant's Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more that 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (a) The acquiring company and the acquired company are part of the same group of investment companies; (b) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (c) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Securities Exchange Act of 1934 or by the Commission; and (d) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G). Applicants state that the proposed arrangement would comply with the provisions of section 12(d)(1)(G), but for the fact that an Upper Tier Fund's investments will include shares of one or more Underlying Funds as well as Other Securities.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if, and to the extent that, the exemption is consistent with the public interest and the protection of investors. Applicants request an order under section 12(d)(1)(J) exempting them from section 12(d)(1)(G)(i)(II). Applicants assert that permitting the Upper Tier Funds to invest in the Underlying Funds and Other Securities as described in the application would not raise any of the concerns that the requirements of section 12(d)(1)(G) were designed to address.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Before approving any advisory contract under section 15 of the Act, the board of directors of NFI (on behalf of Nations Equity Income Fund) or any other Company (on behalf of another Upper Tier Fund), including a majority of the independent directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, will find that advisory fees, if any, charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to any Underlying Fund's advisory contract; provided, however, that no such finding will be necessary if: (a) The Upper Tier Fund pays no advisory fee on assets invested in an Underlying Fund; or (b) the Upper Tier Fund pays an advisory fee on asserts invested in an Underlying Fund and either (i) the Underlying Fund pays no advisory fee, or (ii) the advisory fee paid by the Upper Tier Fund is reduced by the proportional amount of the advisory fee paid by the Underlying Funds with respect to the shares held by the Upper Tier Fund. If a finding is necessary, the finding, and the basis upon which the finding was made, will be recorded fully in the minute books of NFI or other relevant Company (on behalf of another Upper Tier Fund).

2. Applicants will comply with all provisions of section 12(d)(1)(G), except for section 12(d)(1)(G)(i)(II) to the extent that it restricts Nations Equity Income Fund or any Upper Tier Fund from investing in Other Securities as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31274 Filed 12–7–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24780; 812–12316]

Vision Group of Funds, et al.; Notice of Application

December 1, 2000.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit the proposed reorganizations of eleven series (the ''Acquired Funds'') of Governor Funds with and into eleven series of Vision Group of Funds (''Vision Funds'') (the ''Acquiring Funds,'' and together with the Acquired Funds, the ''Funds''). Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: Vision Funds, Governor Funds, Manufacturers and Traders Trust Company (''M&T Bank''), Governor Funds, and Martindale Andres & Company LLC (''Martindale'').

FILING DATES: The application was filed on November 3, 2000. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with copies of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 26, 2000, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, c/o Victor R. Siclari, Esq., Federated Services Company, Federated Investors Tower—12th Floor, Pittsburgh, Pennsylvania 15222–3779.

FOR FURTHER INFORMATION CONTACT: Karen L. Goldstein, Senior Counsel, at (202) 942–0646, or Christine Y. Greenlees, Branch Chief, at (202) 942–

0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Vision Funds, a Delaware business trust, is registered under the Act as an open-end management investment company and currently offers eighteen series (the ''Vision Series''). Eleven of the Vision Series, Vision Treasury Money Market Fund, Vision Large Cap Core Fund, Vision Institutional Prime Money Market Fund, Vision Small Cap Stock Fund, Vision International Equity Fund, Vision Intermediate Term Bond Fund, Vision Institutional Limited Duration U.S. Government Fund, Vision Pennsylvania Municipal Income Fund, Vision Managed Allocation Fund—Conservative Growth, Vision Managed Allocation Fund—Moderate Growth, and Vision Managed Allocation Fund—Aggressive Growth, are Acquiring Funds. All of the Acquiring Funds except Vision Treasury Money Market Fund and Vision Large Cap Core Fund were recently organized for purposes of the proposed Reorganizations (as defined below).

2. Governor Funds, a Delaware business trust, is registered under the Act as an open-end management investment company and currently offers eleven series, which are Acquired Funds: Governor Prime Money Market Fund, Governor U.S. Treasury Obligations Money Market Fund, Governor Established Growth Fund, Governor Aggressive Growth Fund, Governor International Equity Fund, Governor Intermediate Term Income Fund, Governor Limited Duration Government Securities Fund, Governor Pennsylvania Municipal Bond Fund, Governor Lifestyle Conservative Growth Fund, Governor Lifestyle Moderate Growth Fund, and Governor Lifestyle Growth Fund.

3. M&T Bank serves as investment adviser to each Acquiring Fund. M&T Bank is not currently required to register as an investment adviser pursuant to section 202(a)(11)(A) of the Investment Advisers Act of 1940 (''Advisers Act''). M&T Bank is the principal banking subsidiary of M&T Bank Corporation, a regional bank holding company.

4. Martindale is an investment adviser registered under the Advisers Act and serves as investment adviser to each of the Acquired Funds. In addition, Martindale will be the sub-adviser of the Vision Small Cap Stock Fund. Martindale is a subsidiary of M&T Bank Corporation. Brinson Partners, Inc., an investment adviser registered under the Advisers Act, is the current sub-adviser to the Governor International Equity Fund and will be the sub-adviser for the corresponding Vision International Equity Fund.

5. M&T Bank and/or certain affiliated persons of M&T Bank (M&T Bank and such affiliated persons are collectively referred to as ''M&T Bank Affiliates'') hold of record for the benefit of others, in trust, agency, custodial or other fiduciary or representative capacity, more than 5% (in some cases, more than 25%) of the total outstanding shares of certain of the Acquired Funds.

6. On August 11, 2000 and October 27, 2000, the board of trustees of Vision Funds (''Vision Board'') and the board of trustees of Governor Funds (''Governor Board'' and together with the Vision Board, the ''Boards''), respectively, including all the trustees who are not ''interested persons'' of those Funds, as defined in section 2(a)(19) of the Act (''Disinterested Trustees''), approved the respective agreements and plans or reorganization entered into between Vision Funds and Governor Funds (the ''Plans''). Under the Plans, each Acquired Fund will acquire all, or substantially all, of the assets and liabilities of the corresponding Acquired Fund in exchange for Class A shares of the Acquiring Fund (each a ''Reorganization,'' and collectively, the ''Reorganizations'').[1] The shares of each Acquiring Fund exchanged will have an aggregate net asset value equal to the aggregate net asset value of the Acquired Fund's shares determined as of the close of regular trading on the New York Stock Exchange on the business day preceding the day of the closing of each Reorganization (''Closing Date''). The value of the assets of the Acquired Funds will be determined according to the Acquired Funds' then-current prospectuses and statements of additional information. As soon as reasonably practicable after the Closing Date, each Acquired Fund will be liquidated by the distribution of the Acquiring Fund shares pro rata to the shareholders of the Acquired Fund.

7. Applicants state that the investment objectives and policies of each Acquired Fund are identical or substantially similar to those of the corresponding Acquiring Fund. The Acquired Funds offer two classes shares, Investor shares and S shares, and the Acquiring Funds offer Class A, Class B and Class S shares. The only shares that will be involved in the Reorganizations will be Investor shares and Class A shares. Investor shares and Class A shares of the Acquired and Acquiring Funds are subject to a front-end sales charge, except for Class A shares of Vision Treasury Money Market Fund and Vision Institutional Prime Money Market Fund and Investor shares of their corresponding Acquired Funds. Shares of each Acquired Fund and the Class A shares of each Acquiring Fund are currently not subject to a contingent deferred sales charge. The Acquired Funds' Investor shares are not subject to rule 12b–1 distribution or shareholder service fees, except for Investor shares of three of the Acquired Funds, which are subject to rule 12b–1 distribution fees. The Acquiring Funds' Class A shares are subject to rule 12b–1 distribution and shareholder services fees. Shareholders of the Acquired Funds will not be subject to a contingent deferred sales charge upon redemption of the Acquiring Fund shares that they receive in connection with the Reorganizations. No sales charges will be imposed in connection with the Reorganizations. M&T Bank will bear the costs associated with the Reorganizations.

8. The Boards, including all of the Disinterested Trustees, determined that the participation of each Acquiring and Acquired Fund in a Reorganization was in the best interests of each Fund and its shareholders, and that the interests of the shareholders of each Fund would not be diluted as a result of the Reorganization. In assessing the Reorganizations, the Boards considered various factors, including: (a) The investment objectives, policies and strategies of each of the Acquired Funds and their corresponding Acquiring Funds; (b) the investment advisory and other fees paid by each of the Acquiring

[1] Under the Plans, the Acquired Funds will be reorganized into the Acquiring Funds as follows: Governor Aggressive Growth Fund will reorganize into Vision Small Cap Stock Fund, Governor Established Growth Fund into Vision Large Cap Core Fund, Governor Intermediate Term Income Fund into Vision Intermediate Term Bond Fund, Governor International Equity Fund into Vision International Equity Fund, Governor Lifestyle Conservative Growth Fund into Vision Managed Allocation Fund—Conservative Growth, Governor Lifestyle Growth Fund into Vision Managed Allocation Fund—Aggressive Growth, Governor Lifestyle Moderate Growth Fund into Vision Managed Allocation Fund—Moderate Growth, Governor Limited Duration Government Securities Fund into Vision Institutional Limited Duration U.S. Government Fund, Governor Pennsylvania Municipal Bond Fund into Vision Pennsylvania Municipal Income Fund, Governor Prime Money Market Fund into Vision Institutional Prime Money Market Fund and Governor U.S. Treasury Obligations Money Market Fund into Vision Treasury Money Market Fund.

Funds and the projected expenses of each of the Acquiring Funds; (c) the terms and conditions of the Plans; and (d) the anticipated tax consequences of the Reorganizations for the Funds and their shareholders. In addition, the Governor Board considered: (a) The capabilities, resources, and experience of M&T Bank and other service providers; and (b) the shareholder services offered by Vision Funds.

9. The Reorganizations are subject to a number of conditions precedent, including that: (a) The shareholders of each Acquired Fund will have approved the Reorganization; (b) the Funds will have received opinions of counsel concerning the tax-free nature of each Reorganization; (c) applicants will have received from the Commission an exemption from section 17(a) of the Act for the Reorganizations, (d) an N–14 Registration Statement relating to each Reorganization has become effective with the Commission, and (e) each of the Acquired Funds and the Vision Treasury Money Market Fund will declare and pay on or before the Closing Date a dividend or dividends, which, together with all previous dividends, will have the effect of distributing to its shareholders substantially all of its net investment income and realized net capital gain, if any, for all taxable years ending on or before the Closing Date. The Plans may be terminated and the Reorganizations abandoned at any time prior to the Closing Date by the mutual consent of the Governor Board and the Vision Board. Applicants agree not to make any material changes to the Plans without prior approval of the Commission staff.

10. A registration statement on Form N–14 with respect to the Reorganizations, containing a proxy statement/prospectus, was filed with the Commission on November 13, 2000 and was mailed to shareholders of the Acquired Funds on November 14, 2000. A shareholders meeting of the Acquired Funds is scheduled for December 13, 2000.

Applicant's Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a–8 under the Act exempts certain mergers, consolidations, and sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions are satisfied. Applicants believe that rule 17a–8 not be available to exempt the Reorganizations because the Funds may be deemed to be affiliated by reasons other than having a common investment adviser, common directors/trustees, and/or common officers. Applicants state that M&T Bank Affiliates hold of record for the benefit of others, in trust, agency, custodial or other fiduciary or representative capacity, more than 5% (in some cases, more than 25%) of the total outstanding shares of certain of the Acquired Funds. Because of these ownership positions, each Acquired Fund may be deemed to be an affiliated person of an affiliated person of its corresponding Acquiring Fund.

3. Section 17(b) of the Act provides, in relevant part, that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

4. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to complete the Reorganizations. Applicants submit that the Reorganizations satisfy the standards of section 17(b) of the Act. Applicants state that the terms of the Reorganizations are reasonable and fair and do not involve overreaching. Applicants state that the investment objectives and policies of each Acquired Fund are identical, or substantially similar to, those of its corresponding Acquiring Fund. Applicants also state that the Boards, including all of the Disinterested Trustees, found that the participation of the Acquired and Acquiring Funds in the Reorganizations is in the best interests of each Fund and its shareholders and that such participation will not dilute the interests of the existing shareholders of each Fund. In addition, applicants state that the Reorganizations will be on the basis of the Funds' relative net asset values.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31275 Filed 12–7–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC—24782; 813–224]

Elfun Trusts, et al.; Notice of Application

December 1, 2000.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under section 6(b) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicants request an order that would amend prior orders (''Prior Orders'')[1] to expand the class of persons eligible to purchase shares of certain employees' securities companies to include certain specified immediate family members and grandchildren of eligible employees. In addition, the order would permit eligible employees to transfer shares of

[1] *Elfun Trust,* Investment Company Act Release Nos. 22335 (Nov. 14, 1996) (notice) and 22385 (Dec. 10, 1996) (order); *Elfun Money Market Fund,* Investment Company Act Release Nos. 17384 (Mar. 16, 1990) (notice) and 17433 (Apr. 13, 1990) (order); *Elfun Trust,* Investment Company Act Release Nos. 17039 (June 30, 1998) (notice) and 17082 (July 25, 1989) (order); *Elfun Trusts,* Investment Company Act Release Nos. 17038 (June 30, 1989) (notice) and 17083 (July 25, 1989) (order); *Elfun Diversified Fund,* Investment Company Act Release Nos. 16146 (Nov. 24, 1978) (notice) and 16186 (Dec. 22, 1987) (order); *Elfun Global Fund,* Investment Company Act Release Nos. 16042 (Oct. 8, 1987) (notice) and 16114 (Nov. 5, 1987) (order); *Elfun Income Fund,* Investment Company Act Release Nos. 13485 (Sept. 7, 1983) (notice) and 13612 (Nov. 2, 1983) (order); *General Electric S&S Long Term Interest Fund,* Investment Company Act Release Nos. 10929 (Nov. 6, 1979) (notice) and 10971 (Dec. 4, 1979 (order); *Elfun Trust.* Investment Company Act Release Nos. 10375 (Aug. 23, 1978) (notice) and 10414 (Sept. 20, 1978) (order); *Elfun Tax-Exempt Income Fund,* Investment Company Act Release Nos. 9839 (July 5, 1977) (notice) and 9879 (Aug. 2, 1977) (order); *General Electric Company,* Investment Company Act Release Nos. 4973 (May 31, 1967) (notice) and 5830 (Sept. 29, 1969) (order); and *Executives Investment Trusts and Elfun Trusts,* Investment Company Act Release No. 584 (Dec. 2, 1943) (order).

the employees' securities companies to estate planning vehicles formed for the benefit of lineal descendants of the eligible employees.

APPLICANTS: Elfun Trusts, Elfun Tax-Exempt Income Fund, Elfun Income Fund, Elfun International Equity Fund, Elfun Diversified Fund, Elfun Money Market Fund (collectively, the ''Elfun Funds''), and General Electric S&S Program Mutual Fund and General Electric S&S Long Term Interest Fund (collectively, the ''S&S Funds'').

FILING DATES: The application was filed on December 22, 1999, and amended on December 1, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 26, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Alan M. Lewis, Esq., GE Asset Management Incorporated, 3003 Summer Street, Stamford, Connecticut 06905.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Special Counsel, at (202) 942–0572, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Applicants are diversified, open-end management investment companies registered under the Act. Shares of the Elfun Funds are registered under the Securities Act of 1933. Each applicant is organized and operated to meet the definition of an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act for the benefit of employees of General Electric Company (''GE'').

2. Pursuant to the Prior Orders, shares of the Elfun Funds may be purchased by: (a) members of an honor society of GE employees (''Elfun Society Members''); (b) employees of the Elfun Funds' adviser who have been employed by the adviser for at least one year (''Adviser Employees''); (c) immediate family members of both (a) and (b) above; (d) trusts whose sole beneficiaries are individuals in (a) through (c) above; (e) surviving unmarried spouses of deceased Elfun Society members; (f) members of the board of directors of GE; and (g) GE and its subsidiaries (persons in (a), (b), and (f) are ''Elfun Eligible Investors'').

3. The S&S Funds are part of a defined contribution profit sharing plan (the ''Program'') that is intended to qualify for favorable tax treatment under sections 401(a) and 401(k) of the Internal Revenue Code of 1986, as amended. Units in the S&S Funds (''Units'') are offered only to employees participating in the Program (''S&S Employee Participants''). Although Units cannot be purchased outside of the Program, under certain circumstances S&S Employee Participants may hold Units outside the Program (''S&S Distributees''). (Collectively, Elfun Eligible Investors and S&S Distributees are ''Eligible Employees'')

4. Under the Prior Orders, the Elfun Funds have limited investment by the immediate family members of Elfun Society Members and Adviser Employees to spouses and children (including step and adoptive relationships) of such Elfun Society Members and Adviser Employees. The S&S Funds have limited the transfer of Units held outside of the Program to the immediate family members of S&S Distributees, which is limited to spouses and children (including step and adoptive relationships). Applicants propose to expand the class of immediate family members of Eligible Employees who may invest in the Elfun and S&S Funds to include any parent, spouse of a parent, child, spouse of a child, spouse, brother, sister, or grandchild (including step and adoptive relationships) (''Eligible Family Members'') of Eligible Employees. In addition, the order would permit Eligible Employees to transfer shares of the Elfun and S&S Funds held by them to estate planning vehicles formed for the benefit of lineal descendants of the Eligible Employees.

Applicants' Legal Analysis

1. Section 2(a)(13) of the Act defines ''employees' securities company'' generally as any investment company, or similar issuer, all of the outstanding securities of which (other than short-term paper) are beneficially owned by employees or persons on retainer, former employees, and immediate family of the employees, persons on retainer, or former employees.

2. Section 6(b) of the Act provides that the Commission shall exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Applicants state that the proposal satisfies the requirements of section 6(b).

3. Applicants state that an employees' securities company is a labor-related entity that exists primarily to promote the economic welfare of its employee-investors. Applicants also state that the requested relief would permit Eligible Employees to achieve certain tax and economic goals through the effective use of estate planning tools. Applicants state that the requested relief is consistent with the protection of investors because permitting Eligible Family Members of Eligible Employees to invest in the Funds, and Eligible Employees to transfer shares of the Funds to estate planning vehicles formed for the benefit of lineal descendants of the Eligible Employees, would preserve the status of the Funds as entities designed primarily to promote the economic welfare of Eligible Employees.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31273 Filed 12–7–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of December 11, 2000.

An open meeting will be held on Wednesday, December 13, 2000, at 10:00 a.m. in Room 1C30, the William O. Douglas Room and closed meetings will be held on Wednesday, December 13, 2000. and Thursday, December 14, 2000 at 11 a.m.

The subject matter of the open meeting will be:

The Commission will hear oral argument on an appeal by Russo Securities, Inc. (''RSI''), a registered broker-dealer, and Kimberly Kent, RSI's

chief financial officer and registered financial and operations principal.

The law judge found that, on four separate dates between December 1995 and March 1996, RSI violated the Commission's net capital rule, failed to keep accurate books and records, and failed to notify the Commission of its net capital and books and records deficiencies. The law judge also found that Kent willfully aided and abetted, and caused, RSI's violations. The law judge fined RSI $100,000; suspended Kent for one year from association with a broker-dealer or a member of a national securities exchange or registered securities association, and fined Kent $25,000; and ordered RSI and Kent to cease and desist from future similar violations.

Among the issues likely to be argued are the following:

(1) Whether the stock due to RSI under its investment banking agreements was ''readily convertible into cash,'' and thus an allowable asset under the net capital rule;

(2) Whether the net capital rule's provision for disallowing assets not ''readily convertible into cash'' violates due process;

(3) Whether Kent's conduct satisfied the elements of aider and abettor liability; and

(4) What sanctions; if any, are appropriate.

For further information, contact Joan Loizeaux at (202) 942–0950.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matter at the closed meeting.

The subject matter of the closed meeting scheduled for Wednesday, December 13, 2000 will be:

- Post argument discussion.

The subject matter of the closed meeting scheduled for Thursday, December 14, 2000 will be:

- Institution and settlement of injunctive actions; and
- Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: December 6, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31485 Filed 12–6–00; 3:44 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Net Tel International, Inc.; Order of Suspension of Trading

December 5, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Net Tel International, Inc. (''Net Tel'') because of questions regarding the accuracy of publicly disseminated information concerning, among other things, letters of intent to acquire businesses entered into by Net Tel.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 1:30 p.m. EST, December 5, 2000, through 11:59 p.m. EST, on December 18, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31408 Filed 12–6–00; 11:35 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43653; File No. SR–CSE–00–08]

Self-Regulatory Organizations; The Cincinnati Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change To Include CSE Rule 11.9(u) and Interpretation .01 Thereunder in the Minor Rule Violation Program

December 1, 2000.

I. Introduction

On October 13, 2000, The Cincinnati Stock Exchange, Incorporated (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CSE Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules, to include CSE Rule 11.9(u) and Interpretation .01 thereunder, requiring CSE members to display certain market orders (''Market Order Display Rule''). The proposed rule change was published for comment in the **Federal Register** on October 27, 2000.[3] No comments were received on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The CSE proposes to amend CSE Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules, which provides for an alternative disciplinary regimen involving violations of Exchange rules that the Exchange determines are minor in nature. In lieu of commencing a disciplinary proceeding pursuant to Rules 8.1 through 8.14, the Minor Rule Violation Program (''Program'') permits the Exchange to impose a fine, not to exceed $2,500, on any member, member organization, or registered or non-registered employee of a member or member organization (''Member'') that the Exchange determines has violated a rule included in the Program. Adding a particular rule violation to the Program in no way circumscribes the Exchange's ability to address violations of those rules through more formal disciplinary rules. The Program simply provides the Exchange with greater flexibility in addressing rule violations that warrant a stronger regulatory response after the issuance of cautionary letters and yet, given the nature of the violations, do not rise to the level of requiring formal disciplinary proceedings.

The Exchange proposes to add the failure to properly expose on the Exchange or immediately price improve certain customer market orders, as provided in Interpretation .01 to Exchange Rule 11.9(u), to the list of Exchange rule violations and fines included in the Program.[4] The Exchange believes that Market Order Display Rule violations often are inadvertent and, in most cases, are best addressed in a summary fashion. However, because Interpretation .01 is predicated on the Exchange's commitment to promote customer price improvement

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43471 (October 20, 2000), 65 FR 64463 (October 27, 2000).

[4] For further discussion of the CSE's Market Order Display Rule, *see* CSE Regulatory Circular to Exchange Members 97–07 (June 17, 1997).

opportunities, violations of this Interpretation require sanctions more rigorous than a series of cautionary letters prior to formal proceedings.

Under the proposal, Exchange regulatory staff will review a sampling of Exchange members' market orders, based on appropriate market conditions, to determine if a threshold of market order exposure violations has been exceeded. Violations that exceed 2% of all eligible market orders of any Member for any calendar quarter will result in a $1,000 fine for that quarter. The second quarterly violation within a rolling 12-month period will result in a $2,500 fine. A third quarterly violation within a rolling 12-month period will result in a CSE Business Conduct Committee hearing with a staff recommendation of a $10,000 fine.[5]

The minor rule violation fine schedule is merely a recommended schedule; fines of more or less than the recommended amount can be imposed (up to a $2,500 maximum) in appropriate situations. Also, the Exchange reserves the right to proceed with formal disciplinary action when, in the Exchange's opinion, circumstances warrant a more severe level of sanction or remedial action.

III. Discussion

The Commission has reviewed carefully the CSE's proposed rule change and finds, for the reasons set forth below, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the commission finds the proposal is consistent with sections 6(b)(5),[7] 6(b)(6),[8] 6(b)(7),[9] and 6(d)(1),[10] of the Act.

Section 6(b)(5) requires that the rules of an exchange be designed to promote just and equitable principles of trade and 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. The Commission believes the proposal is consistent with section 6(b)(5) because it will augment the Exchange's ability to police its market, and will allow greater flexibility in responding to violations of the Market Order Display Rule.

Section 6(b)(6) requires that the rules of an exchange provide that its members and persons associated with its members shall be appropriately disciplined for violations of Commission and Exchange rules. Including violations of the Market Order Display Rule in the Program should give the Exchange the ability to treat violations of the Rule in a summary fashion, but retain the flexibility to address more egregious violations of the Rule with more severe sanctions where appropriate.

In addition, the Commission believes that the proposal provides a reasonable procedure for the discipline of Members consistent with sections 6(b)(7) and 6(d)(1) of the Act. Section 6(b)(7) requires the rules of an eschange to be in accordance with the provisions Section 6(d), and, in general, to provide a fair procedure for the disciplining of members and persons associated with members. Section 6(d)(1) requires that, in any proceeding by an exchange to determine whether a member should be disciplined, the exchange must bring specific charges, notify the member of those charges, and give the member an opportunity to defend against the charges. Because CSE Rule 8.15 provides procedural safeguards to the Member being fined, and allows the Member who is disciplined to request full hearing on the matter, the Commission believes the proposal is both reasonable and consistent with sections 6(b)(7) and 6(d)(1).

The Commission notes that by allowing the CSE to address violations of the Market Order Display Rule under the Program, the Commission in no way minimizes the importance of compliance with the Rule, and all other Rules subject to the imposition of fines under the Program. The Commission believes that the violation of any Exchange and/or Commission Rule is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Program provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinay proceedings. The Commission expects that the CSE will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less the recommended amount are appropriate for violation of the Market Order Display Rule on a case by case basis, or if a violation requires formal disciplinary action.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CSE–00–08) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31297 Filed 12–7–00; 8:45 am]

BILLING CODE 8010–01–M

[5] While the Exchange will collect data on a daily basis, the Exchange's initial sampling will consist of a review of data collected for two days per week—the day with the most violations, and the day with the fewest. Based on the Exchange's analysis of this information, the Exchange will determine if the violations exceed 2% of all eligible market orders for each calendar quarter. The Exchange plans eventually to determine violations based on information collected daily, rather than on a partial sample, with March 2001 as the proposed target date. *See* telephone conversation among Jeffrey Brown, Vice President, Regulation and General Counsel, CSE, James Flynn, Staff Attorney, CSE and Katherine England, Assistant Director, Division of Market Regulation (''Division''), SEC and Joseph Morra, Special Counsel, Division, SEC, November 30, 2000.

[6] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(6).

[9] 15 U.S.C. 78f(b)(7).

[10] 15 U.S.C. 78f(d)(1).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43659; File No. SR–ISE–00–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the International Securities Exchange LLC, Relating to Listing Procedures

December 4, 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 November 15, 2000, the International Securities Exchange LLC (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend the procedures by which it lists options to conform its procedures to those currently in place at the other options exchanges. The text of the proposed rule change is available at the Commission and the ISE.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The ISE proposes to amend its listing procedures to conform to the procedures employed by the American Stock Exchange LLC, the Chicago Board Options Exchange, Incorporated, the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. These exchanges long have followed the uniform listing procedures contained in the Joint Exchange Options Plan (''Plan''), which the Commission has approved as rules of each of those exchanges.[3] However, the Plan historically focused on the listing of new options, not the listing of options already trading on another exchange. Among other things, the Plan's procedures require an exchange listing an option to inform The Options Clearing Corporation (''OCC'') of the proposed listing, as well as to provide notice of the listing to all the other markets.

The ISE adopted the Plan, with certain modifications, prior to its launch of trading. The most significant modification in the ISE's version of the Plan relates to the listing of options already trading on another exchange (''multiple-listing procedures''). While the other exchanges have followed informal procedures regarding multiple listings (primarily the requirement to provide each other with three days notice of proposed multiple listings that have been trading for more than ten days), the multiple-listing procedures are not included in the Plan. The ISE codified the multiple-listing procedures in its rules, which the Commission approved as part of the ISE's registration.[4]

The four other options exchanges recently settled an enforcement action with the Commission and an antitrust action with the Department of Justice in which the government claimed, among other things, that the Plan contains anticompetitive elements. The Commission mandated that the four exchanges work together, and with the ISE, to eliminate these anticompetitive provisions.[5] One anticompetitive provision that the Commission identified is the requirement that exchanges provide three-days notice of a proposed multiple listing. To address this concern, the other exchanges have received no-action letters from Commission staff allowing them to list a multiply-traded option with one days notice of the intention to list an option class to OCC and the other exchanges listing that option. The ISE must amend its rules to achieve this same result because it has codified the three days notice provision for multiple listings in its rules. The Proposed rule change will conform the ISE's listing procedures to those of the other exchanges by providing for one days notice to OCC and the other listing exchanges of a new multiple listing.

In addition, the ISE is also proposing to eliminate the prohibition against any exchange that was not a selecting or joining exchange commencing trading the selected option prior to the eighth business day following notification by the selecting and/or joining exchanges of the intention to certify the option. The Exchange believes that this change will conform its listing practices to those of the other options exchanges.

2. Basis

The Exchange believes the basis for the proposed rule change is the requirement under section 6(b)(5) of the Act[6] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for 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 proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) does not become operative for 30 days from the date of filing; and (4) the Exchange provided the Commission with notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the act[7] and Rule 19b–4(f)(6)[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The ISE has requested that the Commission accelerate the operative date of the proposed rule change. The Commission believes that it is consistent with the protection of investors and the public interest and therefore finds good cause to designate the proposal to become immediately operative upon filing. Acceleration of the operative date will ensure that the ISE's listing procedures for multiply traded options conform to the listing procedures of the other options exchanges. For these reasons, the Commission finds good cause to designate that the proposal become immediately operative upon filing.[9]

[3] *See* Securities Exchange Act Release No. 29698 (September 17, 1991), 56 FR 48594 (September 25, 1991).

[4] *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (at note 144 and accompanying text).

[5] Securities Exchange Act Release No. 43268 (September 11, 2000).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to the File No. SR–ISE–00–14 and should be submitted by December 29, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31298 Filed 12–7–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43637; File No. SR–OCC–00–11]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Investment of Excess Funds and to Procedures Applicable to the Safeguarding of Such Investments

November 29, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], notice is hereby given that on October 5, 2000, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow OCC to amend its By-Laws to expand the types of investments that OCC may make its funds in excess of those needed for working capital and to update the procedures applicable to the safeguarding of such investments.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to expand the types of investments that OCC is permitted to make its funds in excess of those needed for working capital and to update the procedures applicable to the safeguarding of such investments.

Article IX, section 1(a) currently provides that the board of directors may invest OCC's excess funds in Government securities. The By-Laws are amended to allow the board or a committee thereof to approve the investment of OCC's funds in other securities or financial instruments. This change permits portfolio diversification and allows OCC to hedge its obligation under stock-based compensation plans. The By-Laws are further amended to explicitly allow OCC to hold securities in accounts at registered broker-dealers. Section 1(a) currently provides that one director (other than the Management Director) must act jointly with an officer of OCC to access or withdraw securities that are the property of OCC. Section 1(a) is being amended to allow withdrawals by joint action of an officer of the rank of vice president or above and the treasurer or an assistant treasurer.

The proposed rule change is consistent with the requirements of section 17A of the Act because it provides reasonable procedures governing the investment of OCC funds in excess of those needed for working capital and for the safeguarding of such investments.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(iii) of the Act and Rule 19b–4(f)(3) thereunder as it is concerned solely with the administration of a self-regulatory organization. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section,

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] A copy of the text of OCC's proposed rule change and the attached exhibit are available at the Commission's Public Reference Section or through OCC.

[3] The Commission has modified the text of the summaries prepared by OCC.

450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–00–11 and should be submitted by December 29, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31276 Filed 12–7–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43652; File No. SR–Phlx–00–96]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. To Disengage Its Automatic Execution System (''AUTO–X'') for a Period of Thirty Seconds After the Number of Contracts Automatically Executed in a Given Option Meets the AUTO-X Minimum Guarantee for That Option

December 1, 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 October 30, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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. On November 27, 2000, the Phlx filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to approve the amended proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes a systems change to ''AUTO–X,'' the automatic execution feature of the Exchange's Automated Options Market System (''AUTOM''),[4] that would disengage AUTO–X for a period of thirty seconds after the number of contracts automatically executed in a given option meets the AUTO–X minimum guarantee for that option. During such thirty-second period, all orders received via AUTOM would be executed manually by the specialist. The Exchange proposes to implement the systems change on a six-month pilot basis initially involving fifteen to thirty options approved by the Exchange's Options Committee.[5] AUTOM users would be notified of the systems change and of the options included in the pilot program through the issuance of a regulatory circular and on the Exchange's website.[6]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to enable the Exchange to take a first step towards the implementation of the dissemination of options quotations with size, as expected to be made available by the Options Price Reporting Authority (''OPRA'') in January, 2001. It is anticipated that the systems change would assist specialists in maintaining fair and orderly markets during peak market activity, by allowing specialists to execute orders delivered via AUTOM manually for a limited period of time after the AUTO–X minimum guarantee is met.

The Exchange's Options Committee, pursuant to its authority under Exchange Rule 1080(c),[7] has determined to propose the implementation of a limited pilot program that would include the following features:

- Once an automatic execution occurs via AUTO–X in an option, the system would begin a ''counting'' program, which would count the number of contracts executed automatically for that option, up to the AUTO–X guarantee, regardless of the number of executions.
- When the number of contracts executed automatically for that option meets the AUTO–X guarantee (for example, fifty contracts executed) within a fifteen second time frame, the system would cease to automatically execute for that option, and would drop all AUTO–X eligible orders in that option for manual handling by the specialist for a period of thirty seconds to enable the specialist to refresh quotes in that option.[8]
- Upon the expiration of thirty seconds, automatic executions would resume and the ''counting'' program would be set to zero and begin counting the number of contracts executed automatically within a fifteen second time frame again, up to the AUTO–X guarantee.
- Again, when the number of contracts automatically executed meets the AUTO–X guarantee within a fifteen second time frame, the system would drop all subsequent AUTO–X eligible orders for manual handling by the specialist for a period of thirty seconds.

The Exchange believes that the pilot program set forth above would enable the Exchange to take a first step towards the implementation of options quotations that include size (*i.e.,* the number of contracts generally available

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Richard S. Rudolph, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 24, 2000 (''Amendment No. 1''). In Amendment No. 1, the Phlx clarified certain aspects of the proposed rule change. Among other things, Amendment No. 1: (i) Specifies the number of, and selection criteria for, options selected for the pilot program; (ii) represents that the Exchange will post on its website a list of options included in the program and will issue a circular to this effect; (ii) clarifies that orders received by AUTO–X that exceed the minimum guarantee will receive a partial automatic execution; and (iv) clarifies that upon the implementation of quotes with size, initially size will not be decremented, and the specialist will be responsible to fill orders at its disseminated quote up to the disseminated size.

[4] AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor.

[5] *See* Amendment No. 1, *supra* note 3.

[6] *See* Amendment No. 1, *supra* note 3.

[7] Exchange Rule 1080(c) provides, in relevant part, that ''[t]he Options Committee may for any period restrict the use of AUTO–X on the Exchange in any option series.'' *See* Securities Exchange Act Release No. 38792 (June 30, 1997), 62 FR 36602 (July 8, 1997) (SR–Phlx–97–24).

[8] Any orders delivered in excess of the minimum AUTO–X guarantee will be executed to the guaranteed amount and the excess will be dropped to the specialist for manual execution. *See* Amendment No. 1, *supra* note 3.

at the posted bid and ask for a given option). Currently, options quotations are disseminated without size.[9] The ''counting'' feature of the proposed system change would function to disengage AUTO–X for a period of thirty seconds in a given option once the number of contracts automatically executed meets the AUTO–X guarantee for that option within a fifteen-second time frame. A similar ''counting'' mechanism is expected to be utilized upon the implementation of the dissemination of options quotations with size. Thus, the proposed pilot program should allow the Exchange to begin the process of moving towards the implementation of quotations with size.[10]

It is also anticipated that the system change would assist specialists in maintaining fair and orderly markets during peak market activity, by allowing specialists to execute orders delivered via AUTOM manually for a limited period of time after the AUTO–X minimum guarantee is met to enable specialists to refresh their quotes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act [11] in general, and with section 6(b)(5) in particular,[12] in that it is designed to perfect the mechanism of a free and open market and a national market system, protect investors and the public interest and promote just and equitable principles of trade by enabling the Exchange to prepare for the dissemination of option quotes with size, and by enabling Exchange specialists to maintain fair and orderly markets during periods of peak market activity.

[9] Currently, Exchange specialists and registered options traders (''ROTs'') are required to fill orders at the best market to a minimum of ten contracts. *See* Exchange Rule 1015(a). Exchange Rule 1080(c) provides that orders with a size of up to seventy-five contracts, subject to the approval of the Options Committee, are eligible for automatic execution via AUTO–X. However, quotations disseminated for options do not currently reflect the minimum AUTO–X size guarantee for a given option, or any size. Rather, AUTOM customers are advised of the minimum size guarantee by way of regularly published memoranda that include a list of all AUTO–X eligible options and the minimum guaranteed AUTO–X size for each such option. A major OPRA enhancement to the dissemination of quotations, to include size, is anticipated in January, 2001.

[10] Specialists will be required to fill orders up to the AUTO–X guarantee size. Upon the implementation of quotes with size, initially size will not be decremented, and the specialist will be responsible to fill orders at the disseminated quote up to the disseminated size. *See* Amendment No. 1, *supra* note 3.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not receive or solicit 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, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those thay 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 the File No. SR–Phlx–00–96 and should be submitted by December 29, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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. In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities system, and protect investors and the public interest.[13] The Commission believes that the proposed rule change should help the Exchange to prepare for disseminating its options quotes with size. In addition, the Commission believes that the proposal may assist specialists in maintaining fair and orderly markets during periods of peak market activity.

[13] 15 U.S.C. 78f(b)(5).

The Commission notes that the Exchange is implementing the proposed systems change to AUTO–X on a pilot basis in a limited number of options, which should enable the Phlx to evaluate the program's effectiveness with respect to dissemination of quotations with size, and whether the change is assisting its specialists in maintaining a fair and orderly market. Specifically, the Commission notes that the Exchange has represented that it will evaluate the pilot program by reviewing specialists' performance in the selected options, and by monitoring and complaints relating to the pilot program. Furthermore, the Commission believes that the Phlx has provided adequate notice of the proposed change to AUTO–X to members, member organizations, and the public. The Commission notes that the Exchange has represented that it will post on its website a list of options included in the pilot program, as well as issue a circular to this effect to members, member organizations, participants, and participant organizations.

Finally, the Commission, pursuant to section 19(b)(2) of the Act,[14] finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.[15] The Commission believes that granting accelerated approval to this pilot program will allow Phlx to evaluate, without delay, the effectiveness of this systems change to AUTO–X and whether the change allows Phlx specialists the opportunity to update their quotes and maintain a fair and orderly market. Accordingly, the Commission finds that there is good cause, consistent with section 19(b)(2) of the Act,[16] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[17] that the proposed rule change (SR–Phlx–00–96) and Amendment No. 1 thereto, are hereby approved on an accelerated basis.

[14] 15 U.S.C. 78s(b)(2).

[15] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(2).

[17] Id.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–31299 Filed 12–7–00; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection(s) should be submitted to the SSA Reports Clearance Officer and to the OMB Desk Officer at the following addresses:

(OMB)

Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC 20503

(SSA)

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

I. The information collection listed below will be submitted to OMB within 60 days from the date of this notice. Your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain a copy of the collection instrument by calling the SSA Reports Clearance Officer at 410–965–4145, or by writing to him at the address listed above.

Application Statement for Child's Insurance Benefits—0960–0010. Title II of the Social Security Act provides for payment of monthly benefits to the children of an insured retired, disabled or deceased worker, if certain conditions are met. The form SSA–4–BK is used by the Social Security Administration to collect information needed to determine whether the child or children are entitled to benefits. The respondents are children of the worker or individuals who complete this form on their behalf.

	Life claims	Death claims
Number of Respondents	925,000	815,000
Frequency of Response	1	1
Average Burden Per Response (minutes)	10.5	15.5
Estimated Annual Burden (hours)	161,875	210,542

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed above.

1. *Application for Lump Sum Death Payment—0960–0013.* The information collected on form SSA–8 by the Social Security Administration is required to authorize payment of a lump-sum death benefit to a widow, widower, or children as defined in section 202(i) of the Social Security Act. The respondents are widows, widowers or children who apply for a lump-sum death payment.

Number of Respondents: 43,850.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 7,308 hours.

2. *Request for Replacement SSA–1099/SSA–1042S Social Security Benefits Statement—0960–0583.* The information requested by the Social Security Administration (SSA) via the Internet will be used to verify identity and to provide replacement copies of Form SSA–1099/SSA–1042, which are needed to prepare Federal tax returns. This Internet option to request a replacement SSA–1099/SSA–1042 will eliminate the need for a phone call to a teleservice center or a visit to a field office. The respondents are beneficiaries who request a replacement SSA–1099/1042 via the Internet.

Number of Respondents: 7,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Average Burden: 583 hours.

Dated: December 4, 2000.

Frederick W. Brickenkamp,

Reports Clearance Officer.

[FR Doc. 00–31307 Filed 12–7–00; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice of Waiver of Aeronautical Land-Use Assurance Lebanon Municipal Airport, West Lebanon, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comments. Notice of intent of waiver with respect to land.

SUMMARY: The FAA is considering a proposal that a portion of airport property (approximately 2.06 acres located on the South side of the Terminal Road) is no longer needed for aeronautical use, as shown on the Airport Layout Plan. There appear to be no impacts to the airport by allowing the disposal of the property. The land was acquired under FAA Project No. 9–27–006–6002 (portion of Parcel No. 7) on September 2, 1960.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** thirty (30) days before modifying the land-use assurance which requires that the property be used for an aeronautical purpose. The purpose of the release of land will provide the abutting developer more flexibility in construction of his facility by allowing the set-back lines to be closer to Airport Road.

DATES: Comments must be received on or before January 8, 2001.

FOR FURTHER INFORMATION CONTACT: Donna R. Witte, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803. Telephone No. 781–238–7624/Fax 781–238–7608. Documents reflecting the proposed FAA action may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts or at the Lebanon Municipal Airport, West Lebanon, New Hampshire.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA in considering the release of the subject airport property at Lebanon Municipal Airport, West Lebanon, New Hampshire. The disposition of proceeds from the disposal of airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

[18] 17 CFR 200.30–3(a)(12).

Issued in Burlington, Massachusetts on November 28, 2000.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 00–31300 Filed 12–7–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–66]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application processing, and disposition of petitions for exemption Part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither 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 December 31, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to sections 11.85 and 11.91 or part 11 of 14 CFR.

Issued in Washington, D.C., on December 5, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 30170.

Petitioner: Visiting Nurse Association.

Section of the 14 CFR Affected: 14 CFR §§ 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/Disposition: To permit VNA to conduct local sightseeing flights at Martin County Airport for the two-day Stuart Air Show in November 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 11/07/00, Exemption No. 7379.

Docket No.: 30048.

Petitioner: Tuscaloosa County Sheriff's Office.

Section of the 14 CFR Affected: 14 CFR § 45.29.

Description of Relief Sought/Disposition: To permit the Sheriff's Office to operate its Cessna 182 airplane (Registration No. 163TC) displaying 2 or 3-inch-high nationality and registration markings on the tail section of the airplane instead of the 12-inch-high markings required by the regulation.

Denial, 08/11/00, Exemption No. 7311

Docket No.: 30100.

Petitioner: Ohio Council on Aeronautical Education.

Section of the 14 CFR Affected: 14 CFR § 135.251, 135.255, 135.353, and appendixes * and J to part 121

Description of Relief Sought/Disposition: To permit OCAE to conduct local sightseeing flights at Don Scott Airport, Columbus, Ohio for a one-day Career and Aviation Education Day event in November 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 11/14/00, Exemption No. 7318.

[FR Doc. 00–31301 Filed 12–07–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–67]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption Part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 31, 2000.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, D.C. on December 5, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2000–8083.

Petitioner: Monterey Bay Chapter of the International Organization of the Ninety-Nines, Inc.

Section of 14 CFR Affected: 14 CFR §§ 135.251, 135.255, 135.353, and appendixes I and J to part 121.

Description of Relief Sought/ Disposition: To permit Monterey Bay 99s to conduct local sightseeing flights at Watsonville Airport for a two-day Nickel-a-Pound airlift in November 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 11/07/2000, Exemption No. 7380

[FR Doc. 00–31302 Filed 12–7–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–68]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion of 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 December 31, 2000.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to http://dms.dot.gov. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at http://sms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC., on December 5, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2000–8218.

Petitioner: Bombardier Aerospace, Inc.

Section of 14 CFR Affected: 14 CFR 25.1435(b)(1).

Description of Relief Sought: To relieve Bombardier Aerospace, Inc., from the requirements of 14 CFR 25.1435(b)(1) for static testing of a complete hydraulic system to 1.5 times the design operating pressure for the CL–600–2D24 (Regional Jet CRJ–900) airplane.

[FR Doc. 00–31303 Filed 12–7–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–69]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption Part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 31, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Forest Rawls (202) 267–8033, or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591.

This notice is published pursuant to sections 11.85 and 11.91 of part 11 of 14 CFR.

Issued in Washington, D.C., on December 5, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 30128.

Petitioner: EAA Warbirds of America Squadron 14, Inc.

Section of the 14 CFR Affected: 14 CFR § 61.63(d)(5) and part 125.

Description of Relief Sought: To permit Squadron 14 pilots to conduct nonstop sightseeing or demonstration flights for compensation or hire within 25 miles of the departure airport in Squadron 14's Douglas DC–3 airplane (Registration No. N2805J, Serial No. 20835) without those pilots having completed the practical test for a DC–3 type rating in actual or simulated instrument conditions.

[FR Doc. 00–31304 Filed 12–7–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Announcement of I–69 Status

AGENCY: Federal Highway Administration, DOT.

ACTION: Announcement of I–69 Status.

SUMMARY: The purpose of this announcement is to provide information on the status of Interstate 69, a transcontinental highway corridor designated by the U.S. Congress to extend from the U.S./Canadian border to the U.S./Mexican border. The public is invited to participate in FHWA NEPA process, and to contact the States through which the corridor runs for specific project information.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for addresses.

FOR FURTHER INFORMATION CONTACT: K. Lynn Berry, Community Impact Specialist, Federal Highway Administration, Southern Resource Center, 61 Forsyth Street, Suite 17T26, Atlanta, GA, 30303, Telephone: (404) 562–3618, E-mail: *klynn.berry@fhwa.dot.gov.*

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA) has initiated the project planning, development, and decisionmaking process for numerous transportation projects related to a transcontinental highway corridor, designated as I–69. The corridor has been defined by the United States Congress to extend from Port Huron, Michigan (bordering Sarnia, Ontario, Canada) to the Lower Rio Grande Valley in Texas at the Mexican border, a distance of more than 1600 miles.

The I–69 corridor (originally known as Corridor 18) was designated by the U.S. Congress as a High-Priority Corridor of National Significance in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). It was further defined in the National Highway System Designation Act of 1995 and the Transportation Equity Act for the 21st Century (TEA–21) in 1998. The I–69 Corridor has been identified to address the transportation needs associated with the increase in goods movements between the three partners (U.S.A., Mexico, and Canada) to the North American Free Trade Agreement of 1992. It is also a key transportation recommendation of the Clinton Administration's Delta Initiative, which is aimed at the revitalization and economic development of the Lower Mississippi Delta Region. The overall purpose of I–69 corridor is to improve international and interstate trade in accordance with national and state goals; and to facilitate economic development in accordance with state, regional, and local policies, plans and surface transportation consistent with national, state, regional, local needs and with congressional designation of the corridor.

Several studies were conducted that informed the authorizing legislation. They include the 1995 Corridor 18 Feasibility Study, a 1996 Corridor 20 Feasibility Study, and the Corridor 18 Special Issues Study, completed in 1997.

Per the legislative authorities, the current definition of I–69 stipulates the following:

- Includes the existing I–69 facility from Indianapolis to Port Huron, Michigan/Sarnia, Ontario, Canada;
- Includes the I–94 facility from Port Huron, through Detroit (including the Ambassador Bridge interchange) to Chicago, Illinois;
- A new Interstate route (I–69) from Indianapolis to the Lower Rio Grande Valley serving the following:

—Evansville, Indiana,
—Memphis, Tennessee,
—Shreveport/Bossier City, Louisiana,
—Houston, Texas.

The route would pass through Mississippi and Arkansas between Memphis and Shreveport/Bossier City.

- Requires that in Tennessee, Mississippi, Arkansas and Louisiana, the corridor follow the alignment generally identified in the ''Special Issues Study'' (1997); and
- Includes, in the Lower Rio Grande Valley:

—US 77 from the Mexican border to US 59 in Victoria, Texas;
—US 281 from the Mexican border to US 59, then to Victoria, Texas;
—The Corpus Christi Northside Highway and Rail Corridor from the intersection of US 77 and I–37 to US 181; and
—FM 511 from US 77 to the Port of Brownsville.

Additional studies have been conducted to refine planning efforts subsequent to ISTEA and TEA–21. The Special Environmental Studies included a report on Sections of Independent Utility (1999) and a Statement of Purpose and Need (February 2000). Related studies examined the Southwest Indiana Highway Corridor; Mississippi State Highway 304 Corridor; The Great River Bridge Crossing of the Mississippi River; The US 59 Corridor Master Plan from Diboll, Texas to Garrison, Texas; and I–69 Route Feasibility in the Houston, Texas metropolitan area.

The Statement of Purpose and Need identified benefits to the Nation that have been shown to outweigh the costs of providing the transportation facility. These benefits are related to system linkage, capacity, transportation demand, economic development, modal/freight interrelationships, safety, and roadway deficiencies. Studies considering alternative transportation modal choices have identified that an interstate highway facility would best meet the needs as identified.

The I–69 corridor and related projects fall within nine States (Michigan, Illinois, Indiana, Kentucky, Tennessee, Mississippi, Arkansas, Louisiana, and Texas). The length of the corridor precludes the planning, development, and decisionmaking of the full corridor as a single construction project. For the purposes of planning, the overall length of more than 1,600 miles was divided into 32 Sections of Independent Utility (SIU). 26 of these sections form a continuous route from the Michigan/Canada border to the Texas/Mexico border, and six sections are identified as connecting routes to I–69. The SIUs were developed in a manner consistent with the FHWA memorandum dated November 3, 1993 on establishing logical termini, and have been approved for advancement to the FHWA National Environmental Policy Act (NEPA) decisionmaking process. In some cases, the FHWA NEPA process, documentation, and approvals have already been applied to projects and work activities within the corridor.

This notice also announces that the advancement of I–69 is moving from the corridor planning and feasibility study stages to the state project planning, development, and FHWA NEPA process and decisionmaking stages. Each state will study viable sections identified above, addressing state and local needs, schedules, and funding constraints in accordance with the FHWA NEPA process. State and local needs for any particular project will be considered, as well as the national legislative and administrative objectives for the movement of goods across the country. The FHWA will partner with the state departments of transportation to facilitate the examination of alternatives and impacts within the proposed corridor, and to ensure consistency in addressing the national transportation objectives relative to transcontinental trade put forth by Congress.

Interagency workshops and briefings have been conducted. The primary mechanism for working with resource agencies has been through the Southeast Natural Resource Leaders Group (SENRLG) and its counterparts in Dallas, Texas, and Chicago, Illinois. SENRLG, which will continue to serve

as an advisory group to I–69 decisionmakers, is a collaboration of regional and Federal executives who lead agencies with natural resource conservation as part of their mission. In addition to the conservation, restoration, and management of resources, SENRLG is committed to promoting ecologically sustainable development. To this end, it will assist transportation officials in determining the impact of I–69 as well as opportunities for enhancing the environment. In working with the resource agencies, emphasis will be given to procedures which will facilitate the acceleration of project management, development, and decisionmaking, and which ensure public outreach, involvement and coordination with Federal, state, and local agencies.

There have been many public involvement activities and opportunities throughout the I–69 process. During the planning and feasibility study stages, a series of public meetings was held in Memphis, Tennessee, a city central to the corridor. They were held on the following dates:

November 7, 1994 to receive suggestions and comments.

September 25, 1995 to discuss results of the Feasibility Study.

August 29, 1996 to receive suggestions and comments.

May 28, 1997 to discuss the results of the Special Issues Study.

A number of advocacy groups were involved during corridor studies. Additionally, ten Metropolitan Planning Organizations have been involved in planning for I–69, and more opportunities for public involvement will continue throughout the process. Currently, state-specific studies are being conducted in accordance with each state's public involvement process.

Future public involvement activities will be conducted in each state, as I–69 projects are advanced through the FHWA NEPA process. Each state will issue a notice of intent to proceed with the FHWA NEPA process for I–69 projects in the **Federal Register**, clearly identifying the projects as part of the corridor. For information regarding opportunities to participate in the transportation decision-making process, please contact one of the representatives from the state departments of transportation or the FHWA Division offices.

	State contact	FHWA division contact
Michigan	Dave Wresinski, Manager, Project Planning Section, Michigan Department of Transportation, State Transportation Building, 425 West Ottawa, P.O. Box 30050, Lansing, MI 48913, Phone: 517–373–8258, Fax: 517–373–9255, Email: wresinskid@mdot.state.mi.us.	James J. Steele, Division Administrator, Federal Building, Room 207, 315 West Allegan Street, Lansing, Michigan 48933, Phone: 517–377–1844, Fax: 517–377–1804, Email: Michigan. FHWA@fhwa.dot.gov
Illinois	Mr. William Sunley, Deputy Director of Program Development, Division of Highways, Illinois Department of Transportation, 2300 South Dirksen Parkway, Springfield, IL 62764, Phone: 217–782–2972, Email: sunleyb@nt.dot.state.il.us.	Ron Marshall, Division Administrator, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone (217) 492–4600, Fax (217) 492–4621, Email: illinois.fhwa@fhwa.dot.gov
Indiana	Steve Cecil, Deputy Commissioner of Planning and Intermodal Transportation, Indiana Department of Transportation, 100 North Senate Avenue, Room N755, Indianapolis, IN 46204–2249, Phone: 317–232–5535, Fax: 317–232–0238, Email:scecil@indot.state.in.us.	John Baxter, Division Administrator, 575 North Pennsylvania Street, Room 254, Indianapolis, Indiana 46204, Phone: 317–226–7475, Fax: 317–226–7341, Email: John.Baxter@fhwa.dot.gov
Kentucky	Michael Hancock, Deputy State Highway Engineer, Kentucky Transportation Cabinet, State Office Building, Rm 1005, 501 High Street, Frankfort, KY 40622, Phone: 502–564–3730, Fax: 502–564–2277, Email: mhancock@mail.kytc.state.ky.us.	Jose Sepulveda, Division Administrator, 330 West Broadway, Frankfort, KY 40601, Phone: 502–223–6720, Fax: 502–223–6735 Email: jose.sepulveda@fhwa.dot.gov
Tennessee	Dennis Cook, Assistant Chief Engineer, Tennessee Department of Transportation, 700 James K. Polk Building, 505 Deaderick Street, Nashville, TN 37243–0349, Phone: 615–741–3339, Fax: 615–741–0865, Email: dcook@mail.state.tn.us.	Charles S. Boyd, Division Administrator, 640 Grassmere Park Road, Suite 112, Nashville, Tennessee 37211, Phone: 615–781–5770, Fax: 615–781–5773, Email: Charles.Boyd@tn.fhwa.dot.gov
Mississippi	Marlin Collier, Director, Office of Intermodal Planning, Mississippi Department of Transportation, P.O. Box 1850, Jackson, Mississippi 39215, Phone: 601–359–7025, Fax: 601–359–7050, Email: mcollier*@mdot.state.ms.us*.	Andrew H. Hughes, Division Administrator, 666 North Street, Suite 105, Jackson, Mississippi 39202, Phone: 601–965–4217, Fax: 601–965–4231, E-mail: *hughes@ms.fhwa.dot.gov*
Arkansas	Steve Teague, Assistant Chief Engineer for Planning, Arkansas State Highway and Transportation Department, P.O. Box 2261, Little Rock, AR 72203–2261, Phone: 501–569–2241, Fax: 501–569–2400, E-mail: *steve.teague@ahtd.state.ar.us*.	Sandra L. Otto, Division Administrator, 700 West Capitol Avenue, Room 3130, Little Rock, AR 72201, Phone: (501) 324–5625, Fax: (501) 324–6423, Email: sandra.otto@ar.fhwa.dot.gov
Louisiana	Mr. Kenneth A. Perret, Assistant Secretary, Office of Planning and Programming, Louisiana Department of Transportation and Development, P.O. Box 94245, Baton Rouge, LA 70804–9245, Phone: 225–379–1248, Fax: 225–379–1227, Email: kperret@dotdmail.dotd.state.la.us.	William A. Sussmann, Division Administrator, 5304 Flanders Drive, Suite A, Baton Rouge, LA 70808, Phone: 225–757–7600, Fax: 225–757–7601, Email: Louisiana.FHWA@fhwa.dot.gov
Texas	Alvin R. Luedecke, Director, Transportation Planning and Programming Division, Texas Department of Transportation, 200 East Riverside, Bldg. 118, 2nd Floor, Austin, TX 78704, Phone: 512–486–5000, Fax: 512–486–5007, Email: aluedeck@dot.state.tx.us.	C.D. (Dan) Reagan, Division Administrator, 300 E. 8th Street, Austin, TX 78701, Phone: 512–536–5900, Fax: 512–536–5990, Email: Texas.FHWA@fhwa.dot.gov

On behalf of the U.S. Department of Transportation and Federal Highway Administration, Mr. Eugene Cleckley, Director, Field Services—South, Atlanta, Georgia, has been appointed the U.S. DOT Executive Official to facilitate

coordination among the states and FHWA, and to facilitate project management, acceleration, and decisionmaking. He will provide leadership in working with a Steering Committee of transportation officials who will coordinate the I–69 initiative. The Steering Committee, chaired by Mr. Dan Flowers of the Arkansas State Highway and Transportation Department (AHTD), is comprised of eight member states. The AHTD serves as the administrative agency acting on behalf of the Steering Committee and as a central repository for documentation related to the corridor as a whole.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research and Construction. The regulation implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to the program)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: December 1, 2000.

Eugene W. Cleckley,

Director, Field Services—South.

[FR Doc. 00–31145 Filed 12–7–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7363]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The FMCSA announces its decision to exempt 70 individuals from the vision requirement in 49 CFR 391.41(b)(10).

DATES: December 8, 2000.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987; for information about legal issues related to this notice, Mr. Joseph Solomey, Office of the Chief Counsel, (202) 366–1374, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at: *http://dmses.dot.gov.*

Background

Seventy-two individuals petitioned the FMCSA for an exemption of the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of commercial motor vehicles (CMVs) in interstate commerce. They are, Henry Wayne Adams, Willie F. Adams, Fernando Aquilera, Louis Edward Aldrige, Larry Neal Arrington, David Ball, Delbert Ronnie Bays, Rosa C. Beaumont, Jerry A. Bechtold, Robert F. Berry, James A. Bright, Robert R. Buis, David Dominick Bungori, Ronzie L. Carroll, Richard S. Carter, Lynn A. Childress, Kevin L. Cole, David R. Cox, Gerald Wade Cox, Dempsey Leroy Crawhorn Jr., Thomas P. Cummings, Cedric E. Foster, Rosalie A. Gifford, Eugene Anthony Gitzen, Donald Grogan, Elmer Harper, Peter L. Haubruck, Joe Marvin Hill, Brian L. Houle, Christopher L. Humphries, Craig C. Irish, Donald R. Jackson, Nelson V. Jaramillo, Daryl A. Jester, Joseph Vernon Johns, Jimmie W. Judkins, Kurth A. Kapke, Johnny M. Kruprzak, Charles R Kuderer, Thomas D. Laws, Demetrio Lozano, Wayne Mantela, Kenneth D. May, Jimmy R. Millage, Harold J. Mitchell, Gordon L. Nathan, Jerry L. New, Bernice Ray Parnell, Aaron Pennington, Clifford C. Priesmeyer, George S Rayson, Kevin D. Reece, Franklin Reed, Arthur A. Sappington, James L. Schneider, Patrick W. Shea, Carl B. Simonye, Ernie Sims, William H Smith, Paul D. Spalding, Richard Allen Strange, Steven Carter Thomas, George Walter Thornhill, Rick N. Ulrich, Roy F. Varnado, Henry Lee Walker, Larry D. Wedekind, Daniel Wilson, Emmett E. Windhorst, Wonda Lue Wooten, Thomas Long and Gary Bryan.

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a renewable 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' Accordingly, the FMCSA evaluated the petitions on their merits and made a preliminary determination that the exemptions should be granted. On July 25, 2000, the agency published a notice of its preliminary determination and requested comments from the public (65 FR 45817). The comment period closed on August 24, 2000. Two comments were received, and their contents were carefully considered by the FMCSA in reaching the final decision to grant the petitions.

In the case of applicant Kevin Cole, the FMCSA has denied Mr. Cole's request for an exemption from the vision requirements of 49 CFR 391.41(b)(10). Mr. Cole was notified previous to this announcement by letter of his denial. The purpose of publishing his denial here is simply to comply with 49 U.S.C. 31315(b)(4)(c), by periodically publishing in the **Federal Register** the names of persons denied exemptions and the reasons for such denials.

After the agency published its preliminary determination to grant Mr. Cole an exemption, he indicated in a conversation with a member of our staff on August 2, 2000, that he had not driven a CMV during the required 3-year period. Therefore, the FMCSA is unable to conclude that granting him an exemption is likely to achieve a level of safety equal to that existing without the exemption as required by 49 U.S.C. 31315 and 31136(e). In the case of applicant Joe Marvin Hill, Mr. Hill passed away.

Vision and Driving Experience of the Applicants

The vision requirement provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber. 49 CFR 391.41(b)(10).

Since 1992, the FHWA has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (See Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., ''Visual Requirements and Commercial Drivers,'' October 16, 1998, filed in the docket, FHWA–98–4334.) The panel's conclusion supports the FMCSA's (and previously the FHWA's) view that the present standard is reasonable and necessary as a general standard to ensure highway safety. The FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 70 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, corneal and macular scars, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but 26 of the applicants were either born with their vision impairments or have had them since childhood. The 26 individuals who sustained their vision condition as adults have had them for periods ranging from 8 to 36 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye and, in a doctor's opinion, can perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of a valid commercial driver's license (CDL) or non-CDL to operate a CMV. Before issuing a CDL, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate the CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. The Federal interstate qualification standards, however, require more.

While possessing a valid CDL or non-CDL, these 70 drivers have been authorized to drive a CMV in intrastate commerce even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 42 years. In the past 3 years, the 70 drivers had 13 convictions for traffic violations among them. Eight of these convictions were for speeding. The other convictions consisted of: ''Failure to obey traffic signal''; ''Unauthorized towing''; ''Expiration/no drivers license''; ''Failure to yield the right of way to an emergency vehicle'' and; ''Load dropping/shifting/escaping.'' Four drivers were involved in accidents in their CMVs, but did not receive a citation.

Except for two applicants (Thomas J. Long and Gary Bryan), the qualifications, experience, and medical condition of each applicant were stated and discussed in detail in a July 25, 2000, notice (65 FR 45817). The qualifications of Mr. Long were stated in an April 14, 2000, notice (65 FR 20245) and Mr. Bryan's were stated in a May 23, 2000, notice (65 FR 33406). Since docket comments did not focus on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here. With three exceptions, our summary analysis of the applicants as a group is supported by the information published at 65 FR 45817, 65 FR 20245 and 65 FR 33406.

Mr. Long's speeding conviction in a CMV was not reported in the April 14, 2000, notice. The ticket showed he was driving 75 mph in a 45 mph zone. Mr. Long has no accidents or other convictions in a CMV on his driving record for the 3-year period.

A final decision regarding Mr. Bryan's application for a vision exemption was delayed pending receipt of a copy of his Utah motor vehicle record (MVR). He had held a Utah license during the 3-year review period, before moving to Montana. Mr. Bryan faxed us a copy of his Utah MVR on August 28, 2000. His official driving record from Utah and Montana show no accidents and no convictions for moving violations in a CMV for the last 3 years.

In Mr. May's case, his August 29 speeding conviction in a CMV was not reported in the July 25, 2000 notice. The citation showed he was driving 67 mph in a 55 mph zone. Mr. May has no accidents or other convictions in a CMV on his driving record for the 3-year period.

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting these drivers to drive in interstate commerce as opposed to restricting them to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, the FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. Recent driving performance is especially important in evaluating future safety according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of accidents and traffic violations. Copies of the studies have been added to the docket (FHWA–98–3637).

We believe we can properly apply the principle to monocular drivers because data from the vision waiver program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996.) That experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that accident rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting accident proneness from accident history coupled with other factors. These factors, such as age, sex, geographic location, mileage driven and conviction history, are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future accidents. (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall accident predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 70 applicants, we note that cumulatively the applicants have had only four accidents and 13 traffic violations in the last 3 years. None of the accidents resulted in the issuance of a citation against the applicant. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, the FMCSA

concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience provides an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exist on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances are more compact than on highways. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, the FMCSA finds that exempting applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency will grant the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e).

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FMCSA will impose requirements on the 70 individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, retains a copy in his/her driver qualification file if he/she is self-employed. The driver must also have a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

The FMCSA received two comments in this proceeding. The comments were considered and are discussed below.

The Advocates for Highway and Auto Safety (AHAS) expresses continued opposition to the FMCSA's policy to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs), including the driver qualification standards. Specifically, the AHAS: (1) Asks the agency to clarify the consistency of the exemption application information, (2) objects to the agency's reliance on conclusions drawn from the vision waiver program, (3) raises procedural objections to this proceeding, (4) claims the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31136(e)), and finally, (5) suggests that a recent Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by the AHAS were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000) and 65 FR 57230 (September 21, 2000). We will not address these points again herein but refer interested parties to those earlier discussions.

The Licensing Operations of the California Department of Motor Vehicles (DMV) submitted the following comments: ''California is opposed to the granting of exemptions due to Federal Motor Carrier Safety Regulations (FMCSRs) Section 381.600 which states that once a waiver, exemption, or pilot program is authorized it preempts any State law or regulation that conflicts with or is inconsistent with the waiver, exemption or pilot program with respect to a person operating under the waiver or exemption or participating in the pilot program. For traffic safety, California restricts all CDL drivers who do not meet the medical requirements from operating buses, transporting any material that requires placards or markings, and interstate commerce.'' Although ambiguous, this appears to mean that the CDLs issued to drivers who do not comply with the physical qualification standards in 49 CFR Part 391 include special prohibitions on operating (1) buses or vehicles transporting placardable quantities of hazardous materials in intrastate commerce, and (2) all vehicles in interstate commerce. California CDL holders who fail to meet the standards in 391.41 are thus limited to intrastate commerce, but even they are not allowed to drive buses or hazmat vehicles.

The California DMV has not opposed the granting of exemptions in the past, but its Legal Branch has now concluded that once an exemption is granted, the State would not be able to continue prohibiting Federally exempted drivers holding California CDLs from operating in interstate commerce, even if they were transporting passengers or hazardous materials.

Under the Commercial Motor Vehicle Safety Act of 1986, the FMCSA sets minimum testing and licensing standards for drivers of commercial motor vehicles (CDL–CMVs), and the States issue CDLs in accordance with those standards. In most cases, a State may therefore establish more stringent CDL testing and licensing standards, as California appears to have done. However, Sec. 4007(a) of the Transportation Equity Act for the 21st Century (TEA–21), now codified at 49 U.S.C. 31315, preempts ''any State law or regulation that conflicts with or is inconsistent with the * * * exemption * * *'' 49 U.S.C. 31315(d). Under the normal canons of statutory interpretation, the Federal preemption statute supersedes State authority to set more stringent CDL standards because section 31315(d) is both subsequent to and more specific than the CMVSA.

A driver who intended to operate in interstate commerce and held an FMCSA vision exemption could lawfully certify to California under 49 CFR 383.71(a)(1) that he or she met the physical qualification standards of section 391.41. The preemption required by section 31315(d) and 49 CFR 381.600 means that the driver could not be denied an unrestricted CDL by California because of deficient vision or prohibited from driving any kind of vehicle in interstate commerce (though it could issue a CDL valid for no more than the period of the FMCSA exemption). California would of course be required to ensure that the applicant passed the general CDL examination and the skills/knowledge tests required for any endorsement the driver is seeking.

On the other hand, an applicant for a CDL who intended to operate in intrastate commerce could not obtain an FMCSA exemption, since the agency has jurisdiction, for purposes of the physical qualification standards, only over drivers in interstate commerce. The Motor Carrier Safety Assistance Program (MCSAP) regulations allow participating States (including California) to set lower physical qualification standards for drivers operating exclusively in

intrastate commerce 49 CFR 350.341 (h), see 65 FR 15092, at 15109, March 21, 2000. They are not required to do so, however. California could therefore issue a driver who did not meet the standards of section 391.41 an intrastate CDL (*i.e.,* one valid only within the State) which prohibited the driving of buses or hazmat vehicles.

The California DMV further commented that it would continue to oppose all requests for waivers or exemptions that did not prohibit the driver from transporting passengers and hazardous materials. The FMCSA stands by its previous response to California on this issue (see 65 FR 161, January 3, 2000). We believe it is unnecessary to impose any further restrictions on these drivers, since a waiver of or exemption from 49 CFR 391.41(b)(10) expresses the agency's conclusion that the driver will likely perform just as safely as a driver who met the standard.

Notwithstanding the FMCSA's ongoing review of the vision standard, as evidenced by the medical panel's report dated October 16, 1998, and filed in the docket (FHWA–98–4334), the FMCSA must comply with *Rauenhorst* v. *United States Department of Transportation, Federal Highway Administration,* 95 F.3d 715 (8th Cir. 1996), and grant individual exemptions under standards that are consistent with public safety. Meeting those standards, the 70 veteran drivers in this case have demonstrated to our satisfaction that they can continue to operate a CMV with their current vision safely in interstate commerce because they have demonstrated their ability in intrastate commerce. Accordingly, they qualify for an exemption under 49 U.S.C. 31315 and 31136(e).

Conclusion

After considering the comments to the docket and based upon its evaluation of the 70 exemption applications in accordance with the *Rauenhorst* decision, the FMCSA exempts Henry Wayne Adams, Willie F. Adams, Fernando Aquilera, Louis Edward Aldrige, Larry Neal Arrington, David Ball, Delbert Ronnie Bays, Rosa C. Beaumont, Jerry A. Bechtold, Robert F. Berry, James A. Bright, Robert R. Buis, David Dominick Bungori, Ronzie L. Carroll, Richard S. Carter, Lynn A. Childress, David R. Cox, Gerald Wade Cox, Dempsey Leroy Crawhorn Jr., Thomas P. Cummings, Cedric E. Foster, Rosalie A. Gifford, Eugene Anthony Gitzen, Donald Grogan, Elmer Harper, Peter L. Haubruck, Brain L. Houle, Christopher L. Humphries, Craig C. Irish, Donald R. Jackson, Nelson V. Jaramillo, Daryl A. Jester, Joseph Vernon Johns, Jimmie W. Judkins, Kurth A. Kapke, Johnny M. Kruprzak, Charles R Kuderer, Thomas D. Laws, Demetrio Lozano, Wayne Mantela, Kenneth D. May, Jimmy R. Millage, Harold J. Mitchell, Gordon L. Nathan, Jerry L. New, Bernice Ray Parnell, Aaron Pennington, Clifford C. Priesmeyer, George S Rayson, Kevin D. Reece, Franklin Reed, Arthur A. Sappington, James L. Schneider, Patrick W. Shea, Carl B. Simonye, Ernie Sims, William Smith, Paul D. Spalding, Richard Allen Strange, Steven Carter Thomas, George Walter Thornhill, Rick N. Ulrich, Roy F. Varnado, Henry Lee Walker, Larry D. Wedekind, Daniel Wilson, Emmett E. Windhorst, Wonda Lue Wooten, Thomas Long, and Gary Bryan from the vision requirement in 49 CFR 391.41(b)(10), subject to the following conditions:

(1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in its driver qualification file, or keep a copy in his/her driver qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Authority: 49 U.S.C. 322, 31315 and 31136; 49 CFR 1.73.

Issued on: December 4, 2000.

Brian M. McLaughlin,

Director, Office of Policy Plans and Regulations.

[FR Doc. 00–31347 Filed 12–7–00; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–8203]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice announces the FMCSA's decision to renew the exemptions from the vision requirement in 49 CFR 391.41(b)(10), for two individuals.

DATES: This decision is effective December 8, 2000. We must receive your comments on or before January 8, 2001.

ADDRESSES: Please mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* You can look at and copy all the comments at the same address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want to know that we received your comments, please include a self-addressed, stamped postcard or print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987; for information about legal issues related to this notice, Mr. Joe Solomey, Office of the Chief Counsel, (202) 366–1374, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.*

Background

Two individuals have requested renewal of their exemptions from the vision requirement in 49 CFR 391.41(b)(10) which applies to drivers of commercial motor vehicles (CMVs) in interstate commerce. They are Bruce T. Loughary and Leo L. McMurray. Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a renewable 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' Accordingly, the FMCSA has evaluated the two petitions for renewal on their merits and made a determination to extend their exemptions for a renewable 2-year period.

On October 9, 1998, the agency published a notice of final disposition announcing its decision to exempt 12 individuals, including these two applicants for renewal, from the vision requirement in 49 CFR 391.41(b)(10) (63 FR 54519). The qualifications, experience, and medical condition of each applicant was stated and discussed in detail at 63 FR 30285, June 3, 1998. Three comments were received, and their contents were carefully considered by the agency in reaching its final decision to grant the petitions (63 FR 54519). The agency determined that exempting the individuals from 49 CFR 391.41(b)(10) was likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption as long as the vision in each applicant's better eye continues to meet the standard specified in 391.41(b)(10). As a condition of the exemption, therefore, the agency imposed requirements on the individuals similar to the grandfathering provisions in 49 CFR 391.64(b) applied to drivers who participated in the agency's former vision waiver program.

These requirements are as follows: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that vision in the better eye meets the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for an additional 2-year period. In accordance with 49 U.S.C. 31315 and 31136(e), each of the two applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 30285; 63 FR 54519) and each has requested renewal of the exemption. These two applicants have submitted evidence showing that the vision in their better eye continues to meet the standard specified at 49 CFR 391.41(b)(10), and that the vision impairment is stable. In addition, a review of their records of safety while driving with their respective vision deficiencies over the past 2 years, indicates that each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption for each renewal applicant.

Conclusion

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA extends the exemptions from the vision requirement in 49 CFR 391.41(b)(10) granted to Bruce T. Loughary and Leo L. McMurray, subject to the following conditions: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Request for Comments

The FMCSA has evaluated the qualifications and driving performance of the two applicants here and extends their exemptions based on the evidence introduced in their applications for renewal. The agency, however, will review any comments received concerning a particular driver's safety record, evaluate any new information submitted, and determine if the exemption continues to be consistent with the requirements at 49 U.S.C. 31315 and 31136(e). We will consider all comments of this nature that we receive before the close of business on the closing day indicated in the ''Dates'' section.

Authority: 49 U.S.C. 322, 31136 and 31315; and 49 CFR 1.73.

Issued on: December 4, 2000.

Brian M. McLaughlin,

Director, Office of Policy Plans and Regulations.

[FR Doc. 00–31348 Filed 12–7–00; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Hazardous Materials Transportation: Status of Applications for Preemption Determination

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice Regarding Preemption Determinations Delayed Beyond 180 Days.

SUMMARY: This notice advises interested parties that RSPA's Office of the Chief Counsel maintains (on its internet website and in paper form) a chart showing the current status of each administrative proceeding on applications for a determination that Federal hazardous material transportation law preempts requirements of States, political subdivisions of States, or Indian tribes. When a decision has not been issued within 180 days after publication of a notice of the application in the **Federal Register**, this chart includes the reasons why the decision is delayed and an estimate of the additional time necessary before the decision will be

issued. This chart is intended to provide more up-to-date information on the status of preemption applications than a single notice in the **Federal Register** whenever a decision has not been issued within 180 days after publication of the notice of the application.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Assistant Chief Counsel for Hazardous Materials Safety and Research and Technology Law, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION: Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.* (the law), provides an administrative procedure in § 5125(d)(1) for DOT to issue determinations whether a State, local, or Indian tribe requirement on the transportation of hazardous materials is preempted under the criteria set forth in § 5125(a), (b)(1), and (c). RSPA's Office of the Chief Counsel tracks the status of each preemption determination proceeding (both already decided and still pending) on a chart that is kept current on its internet website *(http://rspa-atty.dot.gov)* and in paper form.

Interested parties may access the current chart at any time by going to the website and clicking on ''Preemption.'' A printed version of the current chart may also be obtained at any time by contacting Mr. Bonekemper at the address and telephone number set forth in ''For Further Information Contact'' above.

RSPA also uses this chart to meet the statutory requirement in 49 U.S.C. 5125(d)(1) to advise the public of the reasons for delay, and an estimate of the time when a decision will be made, whenever a decision is not issued within 180 days after the date of publication in the **Federal Register** of a notice of having received an application for a preemption determination. Because this chart will be kept current, RSPA does not intend to publish a new notice in the **Federal Register** each time the 180-day period is exceeded in a preemption proceeding. By keeping this chart up-to-date, RSPA will be providing interested parties with more current and complete information than they would have if RSPA published only a single notice in each proceeding advising that a decision would not be issued within 180 days.

Issued in Washington, DC on December 1, 2000.

Elaine E. Joost,

Acting Chief Counsel, Research and Special Programs Administration.

[FR Doc. 00–31250 Filed 12–7–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33962]

CSX Transportation, Inc.—Trackage Rights Exemption—Ohio Southern Railroad, Incorporated

Ohio Southern Railroad, Incorporated (OSRR) has agreed to grant overhead and local trackage rights to CSX Transportation, Inc. (CSXT), over approximately 1.5 miles of rail line and appended trackage formerly known as CSXT's Zanesville Industrial Track, located between milepost 16.7 and milepost 18.2 in Zanesville, Muskingum County, OH, as part of the sale of CSXT's interest in the line to OSRR.[1]

The transaction was scheduled to be consummated on November 29, 2000, or as soon thereafter as the parties may agree and/or the time required for any necessary labor notice is given.[2]

The purpose of the trackage rights is to allow CSXT to continue to serve the line's existing and future rail customers after the sale of the line to OSRR.

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).

This notice is filed under 49 CFR 1180.2(d)(7). If it 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.

[1] OSRR's purchase of the track from CSXT was the subject of a notice of exemption in *Ohio Southern Railroad, Incorporated—Acquisition and Operation Exemption—CSX Transportation, Inc.*, STB Finance Docket No. 33955.

[2] Under 49 CFR 1180.4(g)(1), a trackage rights exemption is effective 7 days after the notice is filed. Although the applicant indicated that the proposed transaction would be consummated on November 27, 2000, the notice was not filed until November 22, 2000, and thus the proposed transaction could not be consummated before the November 29, 2000 effective date. CSXT's representative has been informed by telephone that the transaction may not be consummated prior to November 29, 2000.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33962, 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, one copy of each pleading must be served on Natalie S. Rosenberg, CSX Transportation, Inc., 500 Water Street (J150), Jacksonville, FL 32202.

Board decisions and notices are available on our website at *http://www.stb.dot.gov.*

Decided: December 1, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–31231 Filed 12–7–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 584X)]

CSX Transportation, Inc.—Discontinuance Exemption—in Hudson County, NJ[1]

On November 20, 2000, CSX Transportation, Inc. (CSXT), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from 49 U.S.C. 10903 to discontinue service over approximately 3.84 miles of the Weehawken Branch[2] and approximately 6.95 miles of the River Line[3] in Hudson County, NJ. The

[1] The petition is related to two abandonment applications filed on November 14, 2000, by Conrail under section 308 of the Regional Rail Reorganization Act of 1973 (3–R Act), 45 U.S.C. 748, a provision added to the 3–R Act by the Northeast Rail Service Act of 1981 (Pub. L. No. 97–35). *See Conrail-Abandonment of the Weehawken Branch—in Hudson County, NJ*, STB Docket No. AB–167 (Sub-No. 766N); and *Conrail—Abandonment of the River Line—in Hudson County, NJ*, STB Docket No. AB–167 (Sub-No. 1067N). Conrail has requested that the applications be considered together because the Weehawken Branch and the River Line are operated as a single line due to changes made to track alignment and operations. Where appropriate, the two lines will be referenced as the River Line.

Notices of Insufficient Revenues were timely filed on October 31, 1983, and October 31, 1985, respectively. The Board must grant the applications within 90 days after their filing date (i.e., by February 12, 2001) unless offers of financial assistance (OFA) are filed within the 90-day period. *See* sections 308(c) and (d).

[2] The 3.84-mile segment extends from the point of switch in Jersey City (approximately MP 0.00), to the southerly R.O.W. line of Baldwin Avenue, in Weehawken (approximately MP 2.84), and includes the former DL&W Railroad Lead to the Hoboken Freight Yard in Jersey City.

[3] The 6.95-mile segment is divided into in two parts: (1) from the connection to the Passaic and

Continued

lines traverse U.S. Postal Zip Codes 07302, 07303, 07306, 07407, and 07087.

CSXT acquired the right to operate over these lines under the North Jersey Shared Assets Areas Operating Agreement approved by the Board in *CSX Corp.—Control and Operating Leases/Agreements—Conrail Inc.*, STB Finance Docket No. 33388 (Decision No. 89) (STB served July 23, 1998), *clarified and modified* (Decision No. 96) (STB served Oct. 19, 1998), *petitions for review pending sub nom. Erie Niagara Rail Steering Committee* v. *STB*, Nos. 98–4285, *et al.* (2d Cir. filed July 31, 1998).[4] Pursuant to that agreement, CSXT does not conduct freight operations over the River Line. CSXT publishes rates and maintains stations for the River Line's shippers,[5] and Conrail conducts the actual train operations in CSXT's name.

The lines do not contain federally granted rights-of-way. A large part of the real estate and track is owned by the New Jersey Transit Corporation (NJT), and the remainder is owned by Conrail.[6] Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by March 9, 2001.[7]

Any OFA with respect to the lines should be filed in the pertinent Conrail application proceeding under section 308(d) of the 3–R Act and 49 CFR 1152.27. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 584X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Natalie Rosenberg, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before December 28, 2000.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152.

An environmental assessment (or impact statement) is normally made available in abandonment or discontinuance proceedings, but under 49 CFR 1105.6(d), the Board may modify the environmental requirements in appropriate circumstances. The requirements are being modified here. CSXT has never conducted operations over the line apart from those Conrail conducted on CSXT's behalf. Granting a carrier authority to discontinue service it has never provided appears to have no environmental impact. The requirement that the carrier submit a report and that the Board prepare an analysis are therefore superfluous.

Board decisions and notices are available on our website at *http://www.stb.dot.gov.*

Decided: November 28, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–30944 Filed 12–7–00; 8:45 am]

BILLING CODE 4915–00–P

Harismus Branch at CP ''Waldo'' in Jersey City (approximately MP 0.00) to the south side of Clifton Road in Weehawken (approximately MP 4.7), including the River Yard; and (2) from (a) the south side of Clifton Road in Weehawken (approximately MP 0.00) to the northwest side of Tonnelle Avenue (excluding the portion of line, associated track, and underlying right-of-way necessary to retain access and continue service to Durkee Foods) in North Bergen (approximately MP 1.53); (b) the National Docks Secondary in Jersey City from its connection with the River Line at CP ''Nave'' to the east side of Newark Avenue (approximately 1,350 feet); and (c) the Weehawken Branch (Chicken Yard) in Weehawken, from its connection with the River Line on the east side of Willow Avenue to the end of the track (approximately 2,450 feet).

[4] Norfolk Southern Railway Company also acquired the same rights with respect to the River Line and filed a similar petition for exemption on November 14, 2000. *See Norfolk Southern Railway Company—Discontinuance Exemption—in Hudson County, NJ*, STB Docket No. AB–290 (Sub-No. 212X).

[5] Two shippers, Cognis Chemical Company and Dykes Lumber Company, are being served.

[6] The River Line's real estate and track was transferred to NJT on or about October 24, 1995, pursuant to the Freight Relocation and River Line Acquisition Agreement that Conrail and NJT entered into on June 8, 1989. Conrail retained a free and exclusive easement for the operation and maintenance of rail freight service.

NJT will reconstruct the River Line and dedicate it to light rail commuter passenger service. The River Line's freight operations will be transferred to Conrail's Northern Branch, which will be reconstructed to accommodate through train service and to remove ''at-grade'' highway and street crossings. Conrail will not terminate freight operations or consummate the abandonment of the River Line, and CSXT will not exercise the discontinuance authority, until the Northern Branch has been reconstructed.

[7] CSXT has requested that its petition for exemption be granted with an effective date of February 12, 2001, to coincide with the anticipated effectiveness of the two related Conrail abandonment applications. This request will be considered by the Board when the petition for exemption is addressed.

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Reinvestment Application.

DATES: Written comments should be received on or before February 7, 2001, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Reinvestment Application.

OMB Number: 1535–0096.

Form Number: PD F 1993.

Abstract: The information is requested to support a request that proceeds of matured Series H savings bonds be reinvested in Series HH bonds.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 20,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 5,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate

of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 4, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–31285 Filed 12–7–00; 8:45 am]

BILLING CODE 4810–39–U

DEPARTMENT OF VETERANS AFFAIRS

Allowance for Private Purchase of an Outer Burial Receptacle in Lieu of a Government-Furnished Graveliner for a Grave in a VA National Cemetery

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Public Law 104–275 was enacted on October 9, 1996. It allowed the Department of Veterans Affairs (VA) to provide a monetary allowance towards the private purchase of an outer burial receptacle for use in a VA national cemetery. Under VA regulation (38 CFR 1.629), the allowance is equal to the average cost of Government-furnished graveliners minus any administrative costs to VA. The law continues to provide a veteran's survivors with the option of selecting a Government-furnished graveliner for use in a VA national cemetery where such use is authorized.

The purpose of this Notice is to notify interested parties of the average cost of Government-furnished graveliners, administrative costs that relate to processing a claim, and the amount of the allowance payable for qualifying interments which occurred during or prior to calendar year 2000, but after October 9, 1996.

DATES: The allowance rates are effective the date this notice appears in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Deanna L. Wilson, Program Analyst, Communications Management Services (402B1), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Telephone: 202–273–5154 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 501(a) and Public Law 104–275, section 213, VA may provide a monetary allowance for the private purchase of an outer burial receptacle for use in a VA national cemetery where its use is authorized. The allowance for qualified interments which occur during or prior to calendar year 2000, but after October 9, 1996, is the average cost of Government-furnished graveliners in fiscal year 1999, less the administrative costs incurred by VA in processing and paying the allowance in lieu of the Government-furnished graveliner.

The average cost of Government-furnished graveliners is determined by taking VA's total cost during a fiscal year for single-depth graveliners which were procured for placement at the time of interment and dividing it by the total number of such graveliners procured by VA during that fiscal year. The calculation excludes both graveliners procured and pre-placed in gravesites as part of cemetery gravesite development projects and all double-depth graveliners. Using this method of computation, the average cost was determined to be $147.96 for fiscal year 1999.

The administrative costs incurred by VA consist of those costs that relate to processing and paying an allowance in lieu of the Government-furnished graveliner. These costs have been determined to be $10.17 for calendar year 2000.

The net allowance payable for qualifying interments occurring during or before calendar year 2000, therefore, is $137.79.

Approved: October 13, 2000.

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

[FR Doc. 00–31290 Filed 12–7–00; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 65, No. 237

Friday, December 8, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commisssion

[Docket No. RP97–288–005]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

Correction

In notice document 00–30351 appearing on page 71102 in the issue of Wednesday, November 29, 2000, the docket number is corrected to read as set forth above.

[FR Doc. C0–30351 Filed 12–7–00; 8:45 am]

BILLING CODE 1505–01–D

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. AA1921-197 (Review), 701-TA-231, 319-320, 322, 325-328, 340, 342, and 348-350 (Review), and 731-TA-573-576, 578, 582-587, 604, 607-608, 612, and 614-618 (Review)]

Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom

Correction

In notice document 00–30673 appearing on page 75301 in the issue of Friday, December 1, 2000, make the following correction:

In the second column, in the second table, the heading ''Corrosion resistant'' should read ''Cold-rolled''

[FR Doc. C0–30673 Filed 12–7–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2090-00; AG Order No. 2336-2000]

RIN 1115-AE 26

Extension of Designation of Somalia Under Temporary Protected Status Program

Correction

In notice document 00–29546 beginning on page 69789 in the issue of Monday, November 20, 2000, make the following corrections:

1. On page 69789, in the third column, in the **SUMMARY** , in the fourth line, ''September 17, 2001'' should read ''September 18, 2000''.

2. On the same page, in the same column, under the same heading, in the seventh line, ''September 17, 2000'' should read ''September 17, 2001''.

[FR Doc. C0–29546 Filed 12–7–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No.34–43526 File No. SR–PCX–00–35]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No.1 to the Proposed Rule Change by the Pacific Exchange, Inc., Relating to Equity Housekeeping Amendments

Correction

In notice document 00–29181 beginning on page 69109 in the issue of Wednesday, November 15, 2000, make the following correction:

On page 69110, in the first column, in the fifth full paragraph ''3. *PCXE Rule 5–Listings* '' should read '' *e. PCXE Rule 5–Listings* ''.

[FR Doc. C0–29181 Filed 12–7–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
December 8, 2000

Part II

Postal Service

39 CFR Part 20

International Mail; Changes in Postal Rates, Fees, and Mail Classifications; Final Rule

POSTAL SERVICE

39 CFR Part 20

International Mail; Changes in Postal Rates, Fees, and Mail Classifications

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service, after considering the comments on proposed changes in international postal rates, fees, and mail classifications, submitted in response to its request on September 26, 2000, hereby gives notice that it is implementing the proposed postal rates, fees, and mail classifications, except the Global Priority Mail variable-weight rates, recorded delivery fee, and insurance fees for Canada which have been modified as explained below. The elimination of Global Package Link is delayed until April 1, 2001.

DATES: Effective January 7, 2001.

FOR FURTHER INFORMATION CONTACT: Walter J. Grandjean (703) 292–3579, or Bruce Hirt (703) 292–3588.

SUPPLEMENTARY INFORMATION: On September 26, 2000, the Postal Service published in the **Federal Register** (65 FR 57864) a notice of proposed changes in international postal rates, fees, and mail classifications. In that notice the Postal Service proposed to change its international mail classification structure from a content-based system to a speed-of-service system. Under this new system the Postal Service will provide the following categories of international mail: Global Express Guaranteed (formerly Priority Mail Global Guaranteed), Global Express Mail (formerly Express Mail International Service), Global Priority Mail, airmail, and economy. Airmail and economy mail will include letter-post and parcel post service. Rates are redesigned for these new categories and the number of rate groups are generally increased to better reflect the cost of sending mail to groups of countries with similar costs. In addition, a number of services and charges are eliminated. These are ValuePost/Canada, New Market Opportunities Program, Global Package Link, recall/change of address service, special delivery, special handling, and storage charges. Also, the book and sheet music rate will be available only for volume mailings of 50 pounds or 200 pieces of mail sent at the same time and presorted by country.

The Postal Service requested comments by October 26, 2000, and by that date received eight responses. One comment was received from a private individual, three comments were received from package mailers using Global Package Link, three comments were received from international mail consolidators, and one comment was received from a large printing and mailing firm.

The private individual questioned the increase in the number of rate groups for single piece airmail letter-post and the logic of the rates within that rate schedule. He further pointed out that certain airmail letter-post rates are higher than the rates for variable-weight Global Priority Mail items, which receive faster service. He also noted the elimination of letter-post service for items weighing over 4 pounds to Canada. Finally, he questioned the pricing of economy letter-post with the first rate increment being 16 ounces and suggested that a lower initial weight increment would be more appropriate and would allow for a lower initial rate.

The Postal Service does not agree that there should be fewer rate groups for letter-post. The Postal Service has maintained a simple rate structure for the first ounce. The rate is 60 cents for Canada and Mexico and 80 cents for all other countries. The first ounce rate increment covers the majority of letter-post items mailed. However, as weight increases costs for providing service to various countries diverge. Having more rate groups over 1 ounce allows the Postal Service to more closely align rates with the cost of providing service to various groups of countries, while maintaining rate simplicity for most users.

The Postal Service has reviewed the alignment of the variable-weight Global Priority Mail rates with the airmail letter-post rates. To maintain an appropriate rate differential based on the service value of Global Priority Mail over airmail letter-post, the Global Priority Mail variable-weight rates have been changed slightly to avoid lower rates for Global Priority Mail as compared to airmail letter-post.

Letter service is currently available to Canada for items over 4 pounds if the item is registered. The Postal Service has found that there is no customer demand for this service. Additionally, this service is provided under a bilateral agreement with Canada Post, and Canada Post is planning to eliminate letter-post service over 4 pounds.

The Postal Service carefully considered the establishment of the minimum rate for economy (surface) letter-post. This change is necessary to ensure adequate cost coverage for this category of mail. It should be noted that there is very little volume that will be affected.

The users of Global Package Link opposed the elimination of this service, stating that similar service is not available from other international carriers, and they had made substantial investment to use the service.

The Postal Service appreciates the usefulness of Global Package Link service. However, the current service has not attracted enough customers to justify its continuation in its current form. The Postal Service, therefore, is eliminating this service. The Postal Service continues to offer a wide variety of package services that it believes will generally meet the needs of all current Global Package Link customers. To ensure that current Global Package Link mailers can transition to other products, the Postal Service will defer the elimination of Global Package Link until April 1, 2001.

The international mail consolidators generally accepted the need for increases in International Priority Airmail and International Surface Air Lift, however, all three expressed concern over the size of the increases and the rates to specific countries.

One consolidator argued that the rates for bulk commercial services, International Priority Airmail and International Surface Air Lift, increased a greater percentage than single piece airmail rates and other rates such as publishers' periodicals. For example, the current airmail rate for a 3-ounce item to countries other than Canada and Mexico is $2.60 and the new rates will range from $2.30 to $2.60 depending on destination. This represents no increase in some cases and a rate decrease in some cases.

The Postal Service readily acknowledges that not all international rates have increased the same percentage. This difference is due to a number of factors. First, the new letter-post category of mail encompasses what were formerly letters, cards, and other articles such as printed matter and small packets. Second, weight increments have been combined. For example, the .5 ounce increments have been replaced by larger 1-ounce weight increments. And third, countries have been placed in more rate groups to better reflect the cost incurred in providing postal service.

One consolidator expressed concern over preparation of International Priority Airmail and whether volumes will now be subject to the International Priority Airmail non-presort worldwide rate instead of the presort rate. It is true that in certain circumstances volumes of International Priority Airmail may no longer qualify for the presort rate. However, the Postal Service believes that the amount of such mail will be minimal. Presort rates are generally

applied when there are 11 pounds to a rate group. Rate groups that contain a small number of countries are generally composed of high-volume countries and mailers are likely to have at least 11 pounds to these countries.

One consolidator suggested that the International Surface Air Lift increase be spread over several years to mitigate the impact. Unfortunately, the Postal Service expects the costs for this category to continue increasing at a relatively high rate and cannot postpone reflecting these cost increases in the rates.

The printing firm requested that it be allowed to use domestic rate endorsements on international mail since it is an additional cost to remove these endorsements for international mail. The commenter noted that it will no longer be necessary to use the endorsement ''printed matter'' on letter-post items. In addition, the commenter agreed with the proposed rate groups, the inclusion of Canada for International Surface Air Lift, and the elimination of ValuePost/Canada.

Currently, international mail cannot bear domestic rate endorsements. The purpose of these endorsements is to show the rate of postage paid and to determine the service to be accorded to a particular piece of mail. These domestic endorsements are inappropriate for international mail and cause confusion as to whether proper international postage has been paid and how to handle the mail. Additionally, these domestic rate endorsements can cause confusion in the delivering foreign country. Accordingly, the Postal Service does not anticipate changing the permit imprint requirements for international mail.

Some of the special service fees contained in the proposed rule are based on the equivalent domestic service. The Postal Rate Commission, in its decision on R2000–1, has recommended changes to those domestic fees. Accordingly, the Postal Service will adopt the domestic equivalent fees for international mail. The fee for recorded delivery service is changed to $1.90 from $2.10. The fee for insurance for parcel post to Canada for indemnity not over $50.00 is changed from $1.35 to $1.10. The fee for each additional $100 of insurance coverage remains $1.00. If different fees are ultimately adopted by the Postal Service for domestic mail, the international fees will be adjusted accordingly.

The notice published on September 26, 2000, contained some errors. In section 261.1, if recorded delivery is used on M-bags, return receipts and restricted delivery are available. In section 282.3, Pickup Service, the fee is $10.25, not $8.25. Under section 292, 292.212 was incorrectly shown as 291.212. Exhibit 293.71 is corrected to reflect the current list of countries to which International Surface Air Lift service is available. The title of 295.41 should read ''Makeup Requirements for Books and Sheet Music.'' The title for Exhibit 295.44 should read ''Books and Sheet Music—Canada Labeling and Routing Information.'' In section 297.1, the reference to 292 should read ''297.2.''

The Postal Service is also changing the name of Express Mail International Service to Global Express Mail. The new name is used in this notice.

After reviewing and considering the comments received, the Postal Service adopts the following international rates, fees, and mail classifications and amends the International Mail Manual (IMM), which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

PART 20—[AMENDED]

1. The authority citations for 39 CFR part 20 continue to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The International Mail Manual (IMM) is amended to incorporate the following postage rates, fees, and regulations:

International Rates and Fees

GLOBAL EXPRESS MAIL

Weight not over (lbs.)	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3 (Great Britain & No. Ireland)	Rate group 4 (Japan)	Rate group 5 (China)	Rate group 6	Rate group 7
.5	$15.50	$16.75	$20.00	$17.00	$19.00	$17.00	$23.00
1	16.25	20.00	24.75	21.00	22.75	19.15	26.00
2	17.00	23.70	28.75	25.00	26.05	21.65	29.00
3	18.25	27.60	32.75	29.00	30.50	24.95	32.00
4	19.25	31.10	35.75	33.00	34.90	28.15	35.00
5	20.50	34.20	38.75	36.75	39.20	31.85	38.00
6	22.75	36.40	41.75	40.05	43.45	34.95	41.20
7	25.00	38.60	44.75	43.35	47.70	38.05	44.40
8	27.25	40.80	47.75	46.65	51.95	41.15	47.60
9	29.50	43.00	50.75	49.95	56.20	44.25	50.80
10	31.75	45.20	53.75	53.25	60.45	47.35	54.00
11	34.00	47.40	56.75	56.55	64.70	50.45	57.20
12	36.25	49.60	59.75	59.85	68.95	53.55	60.40
13	38.50	51.80	62.75	63.15	73.20	56.65	63.60
14	40.75	54.00	65.75	66.45	77.45	59.75	66.80
15	43.00	56.20	68.75	69.75	81.70	62.85	70.00
16	45.25	58.40	71.75	73.05	85.95	65.95	73.20
17	47.50	60.60	74.75	76.35	90.20	69.05	76.40
18	49.75	62.80	77.75	79.65	94.45	72.15	79.60
19	52.00	65.00	80.75	82.95	98.70	75.25	82.80
20	54.25	67.20	83.75	86.25	102.95	78.35	86.00
21	56.50	69.40	86.75	89.55	107.20	81.45	89.20
22	58.75	71.60	89.75	92.85	111.45	84.55	92.40
23	61.00	73.80	92.75	96.15	115.70	87.65	95.60
24	63.25	76.00	95.75	99.45	119.95	90.75	98.80
25	65.50	78.20	98.75	102.75	124.20	93.85	102.00

GLOBAL EXPRESS MAIL—Continued

Weight not over (lbs.)	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3 (Great Britain & No. Ireland)	Rate group 4 (Japan)	Rate group 5 (China)	Rate group 6	Rate group 7
26	67.75	80.40	101.75	106.05	128.45	96.95	105.20
27	70.00	82.60	104.75	109.35	132.70	100.05	108.40
28	72.25	84.80	107.75	112.65	136.95	103.15	111.60
29	74.50	87.00	110.75	115.95	141.20	106.25	114.80
30	76.75	89.20	113.75	119.25	145.45	109.35	118.00
31	79.00	91.40	116.75	122.55	149.70	112.45	121.20
32	81.25	93.60	119.75	125.85	153.95	115.55	124.40
33	83.50	95.80	122.75	129.15	158.20	118.65	127.60
34	85.75	98.00	125.75	132.45	162.45	121.75	130.80
35	88.00	100.20	128.75	135.75	166.70	124.85	134.00
36	90.25	102.40	131.75	139.05	170.95	127.95	137.20
37	92.50	104.60	134.75	142.35	175.20	131.05	140.40
38	94.75	106.80	137.75	145.65	179.45	134.15	143.60
39	97.00	109.00	140.75	148.95	183.70	137.25	146.80
40	99.25	111.20	143.75	152.25	187.95	140.35	150.00
41	101.50	113.40	146.75	155.55	192.20	143.45	153.20
42	103.75	115.60	149.75	158.85	196.45	146.55	156.40
43	106.00	117.80	152.75	162.15	200.70	149.65	159.60
44	108.25	120.00	155.75	165.45	204.95	152.75	162.80
45	110.50	122.20	158.75	168.75	209.20	155.85	166.00
46	112.75	124.40	161.75	172.05	213.45	158.95	169.20
47	115.00	126.60	164.75	175.35	217.70	162.05	172.40
48	117.25	128.80	167.75	178.65	221.95	165.15	175.60
49	119.50	131.00	170.75	181.95	226.20	168.25	178.80
50	121.75	133.20	173.75	185.25	230.45	171.35	182.00
51	124.00	135.40	176.75	188.55	234.70	174.45	185.20
52	126.25	137.60	179.75	191.85	238.95	177.55	188.40
53	128.50	139.80	182.75	195.15	243.20	180.65	191.60
54	130.75	142.00	185.75	198.45	247.45	183.75	194.80
55	133.00	144.20	188.75	201.75	251.70	186.85	198.00
56	135.25	146.40	191.75	205.05	255.95	189.95	201.20
57	137.50	148.60	194.75	208.35	260.20	193.05	204.40
58	139.75	150.80	197.75	211.65	264.45	196.15	207.60
59	142.00	153.00	200.75	214.95	268.70	199.25	210.80
60	144.25	155.20	203.75	218.25	272.95	202.35	214.00
61	146.50	157.40	206.75	221.55	277.20	205.45	217.20
62	148.75	159.60	209.75	224.85	281.45	208.55	220.40
63	151.00	161.80	212.75	228.15	285.70	211.65	223.60
64	153.25	164.00	215.75	231.45	289.95	214.75	226.80
65	155.50	166.20	218.75	234.75	294.20	217.85	230.00
66	157.75	168.40	221.75	238.05	298.45	220.95	233.20
67						224.05	236.40
68						227.15	239.60
69						230.25	242.80
70						233.35	246.00

GLOBAL EXPRESS MAIL

Weight not over (lbs.)	Rate group 8	Rate group 9	Rate group 10	Rate group 11	Rate group 12
.5	$17.00	$19.00	$22.75	$28.50	$22.25
1	20.50	22.00	25.25	31.25	24.75
2	24.00	26.00	28.25	35.50	28.00
3	28.00	30.00	32.50	40.50	32.00
4	32.00	35.00	36.50	44.75	36.00
5	36.00	40.00	40.75	49.75	40.00
6	40.20	44.65	45.00	54.50	44.00
7	44.40	49.30	49.25	59.25	48.00
8	48.60	53.95	53.50	64.00	52.00
9	52.80	58.60	57.75	68.75	56.00
10	57.00	63.25	62.00	73.50	60.00
11	61.20	67.90	66.25	78.25	64.00
12	65.40	72.55	70.50	83.00	68.00
13	69.60	77.20	74.75	87.75	72.00
14	73.80	81.85	79.00	92.50	76.00
15	78.00	86.50	83.25	97.25	80.00
16	82.20	91.15	87.50	102.00	84.00

GLOBAL EXPRESS MAIL—Continued

Weight not over (lbs.)	Rate group 8	Rate group 9	Rate group 10	Rate group 11	Rate group 12
17	86.40	95.80	91.75	106.75	88.00
18	90.60	100.45	96.00	111.50	92.00
19	94.80	105.10	100.25	116.25	96.00
20	99.00	109.75	104.50	121.00	100.00
21	103.20	114.40	108.75	125.75	104.00
22	107.40	119.05	113.00	130.50	108.00
23	111.60	123.70	117.25	135.25	112.00
24	115.80	128.35	121.50	140.00	116.00
25	120.00	133.00	125.75	144.75	120.00
26	124.20	137.65	130.00	149.50	124.00
27	128.40	142.30	134.25	154.25	128.00
28	132.60	146.95	138.50	159.00	132.00
29	136.80	151.60	142.75	163.75	136.00
30	141.00	156.25	147.00	168.50	140.00
31	145.20	160.90	151.25	173.25	144.00
32	149.40	165.55	155.50	178.00	148.00
33	153.60	170.20	159.75	182.75	152.00
34	157.80	174.85	164.00	187.50	156.00
35	162.00	179.50	168.25	192.25	160.00
36	166.20	184.15	172.50	197.00	164.00
37	170.40	188.80	176.75	201.75	168.00
38	174.60	193.45	181.00	206.50	172.00
39	178.80	198.10	185.25	211.25	176.00
40	183.00	202.75	189.50	216.00	180.00
41	187.20	207.40	193.75	220.75	184.00
42	191.40	212.05	198.00	225.50	188.00
43	195.60	216.70	202.25	230.25	192.00
44	199.80	221.35	206.50	235.00	196.00
45	204.00	226.00	210.75	239.75	200.00
46	208.20	230.65	215.00	244.50	204.00
47	212.40	235.30	219.25	249.25	208.00
48	216.60	239.95	223.50	254.00	212.00
49	220.80	244.60	227.75	258.75	216.00
50	225.00	249.25	232.00	263.50	220.00
51	229.20	253.90	236.25	268.25	224.00
52	233.40	258.55	240.50	273.00	228.00
53	237.60	263.20	244.75	277.75	232.00
54	241.80	267.85	249.00	282.50	236.00
55	246.00	272.50	253.25	287.25	240.00
56	250.20	277.15	257.50	292.00	244.00
57	254.40	281.80	261.75	296.75	248.00
58	258.60	286.45	266.00	301.50	252.00
59	262.80	291.10	270.25	306.25	256.00
60	267.00	295.75	274.50	311.00	260.00
61	271.20	300.40	278.75	315.75	264.00
62	275.40	305.05	283.00	320.50	268.00
63	279.60	309.70	287.25	325.25	272.00
64	283.80	314.35	291.50	330.00	276.00
65	288.00	319.00	295.75	334.75	280.00
66	292.20	323.65	300.00	339.50	284.00
67	296.40	328.30	304.25	344.25	288.00
68	300.60	332.95	308.50	349.00	292.00
69	304.80	337.60	312.75	353.75	296.00
70	309.00	342.25	317.00	358.50	300.00

EMS corporate account: 5 percent discount from single piece rates.

GLOBAL PRIORITY MAIL

	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3	Rate group 4 (Australia, Japan, New Zealand)	Rate group 5
Small envelope	$4.00	$4.00	$5.00	$5.00	$5.00
Large envelope	7.00	7.00	9.00	9.00	9.00

VARIABLE WEIGHT

Weight not over (lbs.)	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3	Rate group 4 (Australia, Japan, New Zealand)	Rate group 5
.5	$6.00	$7.00	$8.00	$9.00	$8.00
1	8.00	9.00	10.00	11.00	12.00
1.5	9.00	10.00	12.00	13.00	14.00
2	11.00	13.00	15.00	16.00	17.00
2.5	12.00	16.00	18.00	19.00	21.00
3	14.00	19.00	21.00	22.00	24.00
3.5	16.00	22.00	23.00	24.00	28.00
4	18.00	25.00	26.00	27.00	31.00

Airmail

Letter-post (Aerogrammes: $0.70. Postcards: Canada and Mexico, $0.50; rest of world, $0.70).

SINGLE PIECE LETTER-POST

Weight not over (ozs.)	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3	Rate group 4 (Australia, Japan, New Zealand)	Rate group 5
1	$0.60	$0.60	$0.80	$0.80	$0.80
2	0.85	0.85	1.60	1.70	1.55
3	1.10	1.25	2.40	2.60	2.30
4	1.35	1.65	3.20	3.50	3.05
5	1.60	2.05	4.00	4.40	3.80
6	1.85	2.45	4.80	5.30	4.55
7	2.10	2.85	5.60	6.20	5.30
8	2.35	3.25	6.40	7.10	6.05
12	3.10	4.00	7.55	8.40	7.65
16	3.75	5.15	8.70	9.70	9.25
20	4.40	6.30	9.85	11.00	10.85
24	5.05	7.45	11.00	12.30	12.45
28	5.70	8.60	12.15	13.60	14.05
32	6.35	9.75	13.30	14.90	15.65
36	7.00	10.95	14.50	16.25	17.35
40	7.65	12.15	15.70	17.60	19.05
44	8.30	13.35	16.90	18.95	20.75
48	8.95	14.55	18.10	20.30	22.45
52	9.65	15.80	19.35	21.70	24.20
56	10.35	17.05	20.60	23.10	25.95
60	11.05	18.30	21.85	24.50	27.70
64	11.75	19.55	23.10	25.90	29.45

INTERNATIONAL PRIORITY AIRMAIL

Rate group	Per piece	Drop shipment per pound	Full service per pound
1 (Canada)	$0.25	$2.60	$3.60
2 (Mexico)	0.12	4.60	5.60
3	0.20	4.25	5.25
4	0.20	5.50	6.50
5	0.12	4.60	5.60
6	0.12	4.75	5.75
7	0.12	6.25	7.25
8	0.12	7.25	8.25
Worldwide	0.20	7.00	8.00

AIRMAIL PARCEL POST SINGLE PIECE

Weight not over (lbs.)	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3 (Great Britain & No. Ireland)	Rate group 4 (Japan)	Rate group 5 (China)	Rate group 6	Rate group 7
1	$13.25	$13.00	$16.00	$16.25	$15.25	$14.00	$16.50
2	13.25	15.50	20.00	20.50	19.75	15.50	19.00
3	14.25	17.75	24.00	24.50	24.50	17.50	21.75
4	15.50	20.25	28.00	29.00	29.75	20.25	24.50
5	16.75	23.00	32.00	33.50	35.00	22.75	27.25
6	17.85	25.00	35.00	36.80	39.25	25.65	30.25
7	18.95	27.00	38.00	40.10	43.50	28.55	33.25
8	20.05	29.00	41.00	43.40	47.75	31.45	36.25
9	21.15	31.00	44.00	46.70	52.00	34.35	39.25
10	22.25	33.00	47.00	50.00	56.25	37.25	42.25
11	23.35	35.00	50.00	53.30	60.50	40.15	45.25
12	24.45	37.00	53.00	56.60	64.75	43.05	48.25
13	25.55	39.00	56.00	59.90	69.00	45.95	51.25
14	26.65	41.00	59.00	63.20	73.25	48.85	54.25
15	27.75	43.00	62.00	66.50	77.50	51.75	57.25
16	28.85	45.00	65.00	69.80	81.75	54.65	60.25
17	29.95	47.00	68.00	73.10	86.00	57.55	63.25
18	31.05	49.00	71.00	76.40	90.25	60.45	66.25
19	32.15	51.00	74.00	79.70	94.50	63.35	69.25
20	33.25	53.00	77.00	83.00	98.75	66.25	72.25
21	34.35	55.00	80.00	86.30	103.00	69.15	75.25
22	35.45	57.00	83.00	89.60	107.25	72.05	78.25
23	36.55	59.00	86.00	92.90	111.50	74.95	81.25
24	37.65	61.00	89.00	96.20	115.75	77.85	84.25
25	38.75	63.00	92.00	99.50	120.00	80.75	87.25
26	39.85	65.00	95.00	102.80	124.25	83.65	90.25
27	40.95	67.00	98.00	106.10	128.50	86.55	93.25
28	42.05	69.00	101.00	109.40	132.75	89.45	96.25
29	43.15	71.00	104.00	112.70	137.00	92.35	99.25
30	44.25	73.00	107.00	116.00	141.25	95.25	102.25
31	45.35	75.00	110.00	119.30	145.50	98.15	105.25
32	46.45	77.00	113.00	122.60	149.75	101.05	108.25
33	47.55	79.00	116.00	125.90	154.00	103.95	111.25
34	48.65	81.00	119.00	129.20	158.25	106.85	114.25
35	49.75	83.00	122.00	132.50	162.50	109.75	117.25
36	50.85	85.00	125.00	135.80	166.75	112.65	120.25
37	51.95	87.00	128.00	139.10	171.00	115.55	123.25
38	53.05	89.00	131.00	142.40	175.25	118.45	126.25
39	54.15	91.00	134.00	145.70	179.50	121.35	129.25
40	55.25	93.00	137.00	149.00	183.75	124.25	132.25
41	56.35	95.00	140.00	152.30	188.00	127.15	135.25
42	57.45	97.00	143.00	155.60	192.25	130.05	138.25
43	58.55	99.00	146.00	158.90	196.50	132.95	141.25
44	59.65	101.00	149.00	162.20	200.75	135.85	144.25
45	60.75	.....	152.00	.....	205.00	138.75	147.25
46	61.85	.....	155.00	.....	209.25	141.65	150.25
47	62.95	.....	158.00	.....	213.50	144.55	153.25
48	64.05	.....	161.00	.....	217.75	147.45	156.25
49	65.15	.....	164.00	.....	222.00	150.35	159.25
50	66.25	.....	167.00	.....	226.25	153.25	162.25
51	67.35	.....	170.00	.....	230.50	156.15	165.25
52	68.45	.....	173.00	.....	234.75	159.05	168.25
53	69.55	.....	176.00	.....	239.00	161.95	171.25
54	70.65	.....	179.00	.....	243.25	164.85	174.25
55	71.75	.....	182.00	.....	247.50	167.75	177.25
56	72.85	.....	185.00	.....	251.75	170.65	180.25
57	73.95	.....	188.00	.....	256.00	173.55	183.25
58	75.05	.....	191.00	.....	260.25	176.45	186.25
59	76.15	.....	194.00	.....	264.50	179.35	189.25
60	77.25	.....	197.00	.....	268.75	182.25	192.25
61	78.35	.....	200.00	.....	273.00	185.15	195.25
62	79.45	.....	203.00	.....	277.25	188.05	198.25
63	80.55	.....	206.00	.....	281.50	190.95	201.25
64	81.65	.....	209.00	.....	285.75	193.85	204.25
65	82.75	.....	212.00	.....	290.00	196.75	207.25
66	83.85	.....	215.00	.....	294.25	199.65	210.25
67	.....	.....	.....	.....	298.50	202.55	213.25
68	.....	.....	.....	.....	302.75	205.45	216.25

AIRMAIL PARCEL POST SINGLE PIECE—Continued

Weight not over (lbs.)	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3 (Great Britain & No. Ireland)	Rate group 4 (Japan)	Rate group 5 (China)	Rate group 6	Rate group 7
69					307.00	208.35	219.25
70					311.25	211.25	222.25

AIRMAIL PARCEL POST SINGLE PIECE

Weight not over (lbs.)	Rate group 8	Rate group 9	Rate group 10	Rate group 11	Rate group 12	Rate group 13
1	$12.50	$14.50	$16.00	$18.00	$14.00	$17.00
2	16.00	18.75	18.50	22.00	15.50	19.00
3	20.00	23.25	21.50	26.00	17.25	22.00
4	24.25	26.75	24.00	30.00	19.25	25.00
5	28.75	32.75	26.50	34.00	21.25	28.00
6	32.65	36.50	29.50	37.50	23.75	31.25
7	36.55	40.40	32.50	41.00	26.25	34.50
8	40.45	44.30	35.50	44.50	28.75	37.75
9	44.35	48.20	38.50	48.00	31.25	41.00
10	48.25	52.10	41.50	51.50	33.75	44.25
11	52.15	56.00	44.50	55.00	36.25	47.50
12	56.05	59.90	47.50	58.50	38.75	50.75
13	59.95	63.80	50.50	62.00	41.25	54.00
14	63.85	67.70	53.50	65.50	43.75	57.25
15	67.75	71.60	56.50	69.00	46.25	60.50
16	71.65	75.50	59.50	72.50	48.75	63.75
17	75.55	79.40	62.50	76.00	51.25	67.00
18	79.45	83.30	65.50	79.50	53.75	70.25
19	83.35	87.20	68.50	83.00	56.25	73.50
20	87.25	91.10	71.50	86.50	58.75	76.75
21	91.15	95.00	74.50	90.00	61.25	80.00
22	95.05	98.90	77.50	93.50	63.75	83.25
23	98.95	102.80	80.50	97.00	66.25	86.50
24	102.85	106.70	83.50	100.50	68.75	89.75
25	106.75	110.60	86.50	104.00	71.25	93.00
26	110.65	114.50	89.50	107.50	73.75	96.25
27	114.55	118.40	92.50	111.00	76.25	99.50
28	118.45	122.30	95.50	114.50	78.75	102.75
29	122.35	126.20	98.50	118.00	81.25	106.00
30	126.25	130.10	101.50	121.50	83.75	109.25
31	130.15	134.00	104.50	125.00	86.25	112.50
32	134.05	137.90	107.50	128.50	88.75	115.75
33	137.95	141.80	110.50	132.00	91.25	119.00
34	141.85	145.70	113.50	135.50	93.75	122.25
35	145.75	149.60	116.50	139.00	96.25	125.50
36	149.65	153.50	119.50	142.50	98.75	128.75
37	153.55	157.40	122.50	146.00	101.25	132.00
38	157.45	161.30	125.50	149.50	103.75	135.25
39	161.35	165.20	128.50	153.00	106.25	138.50
40	165.25	169.10	131.50	156.50	108.75	141.75
41	169.15	173.00	134.50	160.00	111.25	145.00
42	173.05	176.90	137.50	163.50	113.75	148.25
43	176.95	180.80	140.50	167.00	116.25	151.50
44	180.85	184.70	143.50	170.50	118.75	154.75
45	184.75	188.60	146.50	174.00	121.25	158.00
46	188.65	192.50	149.50	177.50	123.75	161.25
47	192.55	196.40	152.50	181.00	126.25	164.50
48	196.45	200.30	155.50	184.50	128.75	167.75
49	200.35	204.20	158.50	188.00	131.25	171.00
50	204.25	208.10	161.50	191.50	133.75	174.25
51	208.15	212.00	164.50	195.00	136.25	177.50
52	212.05	215.90	167.50	198.50	138.75	180.75
53	215.95	219.80	170.50	202.00	141.25	184.00
54	219.85	223.70	173.50	205.50	143.75	187.25
55	223.75	227.60	176.50	209.00	146.25	190.50
56	227.65	231.50	179.50	212.50	148.75	193.75
57	231.55	235.40	182.50	216.00	151.25	197.00
58	235.45	239.30	185.50	219.50	153.75	200.25
59	239.35	243.20	188.50	223.00	156.25	203.50
60	243.25	247.10	191.50	226.50	158.75	206.75

AIRMAIL PARCEL POST SINGLE PIECE—Continued

Weight not over (lbs.)	Rate group 8	Rate group 9	Rate group 10	Rate group 11	Rate group 12	Rate group 13
61	247.15	251.00	194.50	230.00	161.25	210.00
62	251.05	254.90	197.50	233.50	163.75	213.25
63	254.95	258.80	200.50	237.00	166.25	216.50
64	258.85	262.70	203.50	240.50	168.75	219.75
65	262.75	266.60	206.50	244.00	171.25	223.00
66	266.65	270.50	209.50	247.50	173.75	226.25
67	270.55	274.40	212.50	251.00	176.25	229.50
68	274.45	278.30	215.50	254.50	178.75	232.75
69	278.35	282.20	218.50	258.00	181.25	236.00
70	282.25	286.10	221.50	261.50	183.75	239.25

AIRMAIL M-BAGS

Weight not over (lbs.)	Rate group 1 Canada	Rate group 2 (Mexico)	Rate group 3	Rate group 4 (Australia, Japan, New Zealand)	Rate group 5
11	$16.50	$17.60	$27.50	$38.50	$38.50
Each additional pound or fraction of a pound	1.50	1.60	2.50	3.50	3.50

ECONOMY MAIL—LETTER-POST SINGLE PIECE

Weight not over (ozs.)	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3	Rate group 4 (Australia, Japan, New Zealand)	Rate group 5
16	$2.70	$4.35	$3.80	$4.05	$4.95
20	4.05	5.15	4.45	4.70	5.70
24	4.55	5.95	5.10	5.35	6.50
28	5.05	6.70	5.70	6.00	7.30
32	5.60	7.50	6.30	6.65	8.10
36	6.00	8.15	6.90	7.25	8.75
40	6.40	8.80	7.50	7.85	9.40
44	6.80	9.45	8.10	8.45	10.05
48	7.20	10.10	8.70	9.05	10.70
52	7.60	10.75	9.30	9.65	11.35
56	8.00	11.40	9.90	10.25	12.00
60	8.40	12.05	10.50	10.85	12.65
64	8.80	12.70	11.10	11.45	13.30

INTERNATIONAL SURFACE AIR LIFT

Rate group	Per piece	Drop shipment per pound	Direct shiipment per pound	Full service per pound	M-Bag drop shipment	M-Bag direct shipment	M-Bag full service
1 (Canada)	$0.25	$2.15	$2.65	$3.15	$1.40	$1.50	$1.50
2 (Mexico)	0.12	3.20	3.70	4.20	1.50	1.60	1.60
3	0.20	2.50	3.00	3.50	1.50	1.75	1.75
4	0.20	2.75	3.25	3.75	2.50	2.50	2.50
5	0.12	3.45	3.95	4.45	2.00	2.25	2.25
6	0.12	3.40	3.90	4.40	2.00	2.25	2.25
7	0.12	3.50	4.00	4.50	2.25	2.50	2.50
8	0.12	5.50	6.00	6.50	3.00	3.25	3.25

PUBLISHERS' PERIODICALS

Weight not over		Canada	Mexico	All other countries (except Canada and Mexico)
lbs.	oz.			
0	1	$0.40	$0.48	$0.44

PUBLISHERS' PERIODICALS—Continued

Weight not over	Canada	Mexico	All other countries (except Canada and Mexico)
0 2	0.46	0.60	0.55
0 3	0.52	0.78	0.71
0 4	0.59	0.90	0.83
0 5	0.65	1.13	1.05
0 6	0.72	1.13	1.05
0 7	0.78	1.36	1.27
0 8	0.85	1.36	1.27
0 9	0.91	1.57	1.50
0 10	0.98	1.57	1.50
0 11	1.04	1.80	1.71
0 12	1.11	1.80	1.71
0 13	1.17	2.03	1.93
0 14	1.24	2.03	1.93
0 15	1.30	2.26	2.15
0 16	1.37	2.26	2.15
0 18	1.43	2.46	2.36
0 20	1.49	2.68	2.56
0 22	1.55	2.88	2.77
0 24	1.61	3.10	2.98
0 26	1.67	3.30	3.19
0 28	1.73	3.52	3.39
0 30	1.79	3.72	3.60
0 32	1.85	3.94	3.81
3 0	4.00	5.38	5.13
4 0	4.64	6.82	6.45

$0.25 per pound discount for volume made up to country and tendered at the New Jersey International and Bulk Mail Center.

BOOKS AND SHEET MUSIC

Weight not over (ozs.)	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3	Rate group 4 (Japan, Australia, New Zealand)	Rate group 5
0.5	$1.70	$2.85	$2.65	$2.60	$2.80
1.0	1.70	2.85	2.65	2.60	2.80
2.0	1.70	2.85	2.65	2.60	2.80
3.0	1.70	2.85	2.65	2.60	2.80
4.0	1.70	2.85	2.65	2.60	2.80
5.0	1.70	2.85	2.65	2.60	2.80
6.0	1.70	2.85	2.65	2.60	2.80
7.0	1.70	2.85	2.65	2.60	2.80
8.0	1.70	2.85	2.65	2.60	2.80
12.0	1.70	2.85	2.65	2.60	2.80
16.0	1.70	2.85	2.65	2.60	2.80
20.0	1.85	3.40	3.20	3.10	3.35
24.0	2.00	3.95	3.75	3.60	3.90
28.0	2.15	4.50	4.25	4.10	4.45
32.0	2.30	5.00	4.75	4.60	5.00
36.0	3.00	5.45	5.10	5.00	5.45
40.0	3.68	5.90	5.50	5.38	5.90
44.0	4.35	6.35	5.90	5.75	6.35
48.0	5.00	6.75	6.20	6.10	6.70
52.0	5.20	7.65	6.60	6.50	7.15
56.0	5.40	8.55	7.00	6.90	7.60
60.0	5.60	9.45	7.40	7.35	8.05
64.0	5.80	10.30	7.80	7.75	8.40

Matter for the Blind—Free.

ECONOMY PARCEL POST SINGLE PIECE

Weight not over (lbs.)	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3 (Great Britain & No. Ireland)	Rate group 4 (Japan)	Rate group 5 (China)	Rate group 6	Rate group 7
5	$15.25	$19.50	$23.00	$23.25	$21.25	$18.25	$22.00
6	15.75	20.75	25.00	25.00	22.75	19.35	24.00
7	16.50	22.00	27.00	26.25	24.25	20.45	26.00
8	17.25	23.00	29.00	27.75	25.75	21.55	28.00
9	17.75	24.00	31.00	29.00	27.25	22.65	30.00
10	18.25	24.75	32.75	30.25	28.75	23.75	32.00
11	18.70	25.50	34.45	31.30	30.00	24.70	33.60
12	19.15	26.25	36.15	32.35	31.25	25.65	35.20
13	19.60	27.00	37.85	33.40	32.50	26.60	36.80
14	20.05	27.75	39.55	34.45	33.75	27.55	38.40
15	20.50	28.50	41.25	35.50	35.00	28.50	40.00
16	20.95	29.25	42.95	36.55	36.25	29.45	41.60
17	21.40	30.00	44.65	37.60	37.50	30.40	43.20
18	21.85	30.75	46.35	38.65	38.75	31.35	44.80
19	22.30	31.50	48.05	39.70	40.00	32.30	46.40
20	22.75	32.25	49.75	40.75	41.25	33.25	48.00
21	23.30	32.95	51.35	41.70	42.40	34.15	49.60
22	23.85	33.65	52.95	42.65	43.55	35.05	51.20
23	24.40	34.35	54.55	43.60	44.70	35.95	52.80
24	24.95	35.05	56.15	44.55	45.85	36.85	54.40
25	25.50	35.75	57.75	45.50	47.00	37.75	56.00
26	26.05	36.45	59.35	46.45	48.15	38.65	57.60
27	26.60	37.15	60.95	47.40	49.30	39.55	59.20
28	27.15	37.85	62.55	48.35	50.45	40.45	60.80
29	27.70	38.55	64.15	49.30	51.60	41.35	62.40
30	28.25	39.25	65.75	50.25	52.75	42.25	64.00
31	28.80	39.95	67.25	51.15	53.85	43.10	65.50
32	29.35	40.65	68.75	52.05	54.95	43.95	67.00
33	29.90	41.35	70.25	52.95	56.05	44.80	68.50
34	30.45	42.05	71.75	53.85	57.15	45.65	70.00
35	31.00	42.75	73.25	54.75	58.25	46.50	71.50
36	31.55	43.45	74.75	55.65	59.35	47.35	73.00
37	32.10	44.15	76.25	56.55	60.45	48.20	74.50
38	32.65	44.85	77.75	57.45	61.55	49.05	76.00
39	33.20	45.55	79.25	58.35	62.65	49.90	77.50
40	33.75	46.25	80.75	59.25	63.75	50.75	79.00
41	34.30	46.95	82.25	60.15	64.85	51.60	80.50
42	34.85	47.65	83.75	61.05	65.95	52.45	82.00
43	35.40	48.35	85.25	61.95	67.05	53.30	83.50
44	35.95	49.05	86.75	62.85	68.15	54.15	85.00
45	36.50	.....	88.25	.....	69.25	55.00	86.50
46	37.05	.....	89.75	.....	70.35	55.85	88.00
47	37.60	.....	91.25	.....	71.45	56.70	89.50
48	38.15	.....	92.75	.....	72.55	57.55	91.00
49	38.70	.....	94.25	.....	73.65	58.40	92.50
50	39.25	.....	95.75	.....	74.75	59.25	94.00
51	39.80	.....	97.25	.....	75.85	60.10	95.50
52	40.35	.....	98.75	.....	76.95	60.95	97.00
53	40.90	.....	100.25	.....	78.05	61.80	98.50
54	41.45	.....	101.75	.....	79.15	62.65	100.00
55	42.00	.....	103.25	.....	80.25	63.50	101.50
56	42.55	.....	104.75	.....	81.35	64.35	103.00
57	43.10	.....	106.25	.....	82.45	65.20	104.50
58	43.65	.....	107.75	.....	83.55	66.05	106.00
59	44.20	.....	109.25	.....	84.65	66.90	107.50
60	44.75	.....	110.75	.....	85.75	67.75	109.00
61	45.30	.....	112.25	.....	86.85	68.60	110.50
62	45.85	.....	113.75	.....	87.95	69.45	112.00
63	46.40	.....	115.25	.....	89.05	70.30	113.50
64	46.95	.....	116.75	.....	90.15	71.15	115.00
65	47.50	.....	118.25	.....	91.25	72.00	116.50
66	48.05	.....	119.75	.....	92.35	72.85	118.00
67	.....	.....	.....	.....	93.45	73.70	119.50
68	.....	.....	.....	.....	94.55	74.55	121.00
69	.....	.....	.....	.....	95.65	75.40	122.50
70	.....	.....	.....	.....	96.75	76.25	124.00

ECONOMY PARCEL POST SINGLE PIECE

Weight not over (lbs.)	Rate group 8	Rate group 9	Rate group 10	Rate group 11	Rate group 12
5	$21.50	$28.75	$21.75	$26.25	$20.25
6	22.80	30.95	23.50	28.75	22.00
7	24.10	33.15	25.00	31.00	23.75
8	25.40	35.35	26.75	33.25	25.50
9	26.70	37.55	29.00	35.50	27.25
10	28.10	39.75	32.00	37.75	28.90
11	29.40	41.65	33.40	39.80	30.55
12	30.70	43.55	34.80	41.85	32.20
13	32.00	45.45	36.20	43.90	33.85
14	33.30	47.35	37.60	45.95	35.50
15	34.60	49.25	39.00	48.00	37.15
16	35.90	51.15	40.40	50.05	38.80
17	37.20	53.05	41.80	52.10	40.45
18	38.50	54.95	43.20	54.15	42.10
19	39.80	56.85	44.60	56.20	43.75
20	41.10	58.75	46.00	58.25	45.40
21	42.40	60.45	47.25	60.15	46.85
22	43.70	62.15	48.50	62.05	48.30
23	45.00	63.85	49.75	63.95	49.75
24	46.30	65.55	51.00	65.85	51.20
25	47.60	67.25	52.25	67.75	52.65
26	48.90	68.95	53.50	69.65	54.10
27	50.20	70.65	54.75	71.55	55.55
28	51.50	72.35	56.00	73.45	57.00
29	52.80	74.05	57.25	75.35	58.45
30	54.10	75.75	58.50	77.25	59.90
31	55.40	77.40	59.75	79.00	61.30
32	56.70	79.05	61.00	80.75	62.70
33	58.00	80.70	62.25	82.50	64.10
34	59.30	82.35	63.50	84.25	65.50
35	60.60	84.00	64.75	86.00	66.90
36	61.90	85.65	66.00	87.75	68.30
37	63.20	87.30	67.25	89.50	69.70
38	64.50	88.95	68.50	91.25	71.10
39	65.80	90.60	69.75	93.00	72.50
40	67.10	92.25	71.00	94.75	73.90
41	68.40	93.60	72.25	96.50	75.30
42	69.70	94.95	73.50	98.25	76.70
43	71.00	96.30	74.75	100.00	78.10
44	72.30	97.65	76.00	101.75	79.50
45	73.60	99.00	77.25	103.50	80.90
46	74.90	100.35	78.50	105.25	82.30
47	76.20	101.70	79.75	107.00	83.70
48	77.50	103.05	81.00	108.75	85.10
49	78.80	104.40	82.25	110.50	86.50
50	80.10	105.75	83.50	112.25	87.90
51	81.40	107.10	84.75	114.00	89.30
52	82.70	108.45	86.00	115.75	90.70
53	84.00	109.80	87.25	117.50	92.10
54	85.30	111.15	88.50	119.25	93.50
55	86.60	112.50	89.75	121.00	94.90
56	87.90	113.85	91.00	122.75	96.30
57	89.20	115.20	92.25	124.50	97.70
58	90.50	116.55	93.50	126.25	99.10
59	91.80	117.90	94.75	128.00	100.50
60	93.10	119.25	96.00	129.75	101.90
61	94.40	120.60	97.25	131.50	103.30
62	95.70	121.95	98.50	133.25	104.70
63	97.00	123.30	99.75	135.00	106.10
64	98.30	124.65	101.00	136.75	107.50
65	99.60	126.00	102.25	138.50	108.90
66	100.90	127.35	103.50	140.25	110.30
67	102.20	128.70	104.75	142.00	111.70
68	103.50	130.05	106.00	143.75	113.10
69	104.80	131.40	107.25	145.50	114.50
70	106.10	132.75	108.50	147.25	115.90

ECONOMY (SURFACE) M-BAGS

Weight not over (lbs).	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3	Rate group 4 (Australi a, Japan, New Zealand)	Rate group 5
Regular:					
11	$11.55	$14.30	$15.95	$16.50	$16.50
Each additional pound or fraction of a pound	1.05	1.30	1.45	1.50	1.50
Books and Sheet Music and Publishers' Periodicals:					
11	8.80	8.80	9.90	11.00	11.00
Each additional pound or fraction of a pound	0.80	0.80	0.90	1.00	1.00

Special Services and Miscellaneous Fees and Charges

Fees with an asterisk are based on the equivalent domestic service.

CERTIFICATE OF MAILING *

	Fee
Individual Pieces:	
Individual articles listing, per article	$0.75
Firm mailing books (PS Form 3877), per article listed	0.25
Each individual copy of individual article listing or original mailing receipt for registered, insured, or recorded delivery (per copy)	0.75
Bulk Pieces:	
Up to 1,000 pieces (one certificate for total number)	3.50
Each additional 1,000 pieces or fraction	0.40
Duplicate copy	0.75

INSURANCE PARCEL POST

Indemnity limit not over	Canada *	All other countries
$50	$1.10	$1.85
100	2.00	2.60
200	3.00	3.60
300	4.00	4.60
400	5.00	5.60
500	6.00	6.60
600	7.00	7.60
675	8.00	
700		8.60
Add'l. $100		1.00

GLOBAL EXPRESS MAIL *

Indemnity limit not over	All countries
$500	No Fee
Add'l. $100	$1.00

REGISTERED MAIL—COUNTRIES OTHER THAN CANADA: $7.25*

Indemnity limit not over	Fee
Canada:	
$100	$7.50
500	8.25
1000	9.00

Return Receipt*: $1.50.

Restricted Delivery*: $3.20.

Recorded Delivery*: $1.90.

International Postal Money Orders—Direct (MP1): $3.25; List: $8.50 (no change).

International Reply Coupons: $1.75.

International Business Reply Service—Cards: $0.80; Envelope up to 2 ounces: $1.20.

Customs Clearance and Delivery Fee: $4.50.

Pick up Service*: $10.25.

Shortpaid Mail Charge: $0.45.

COUNTRY RATE GROUP LIST

Country	EMS	Air CP	Surface CP	Letter-Post	IPA ISAL [1]
Afghanistan		7	7	5	8
Albania	6	7	7	5	5
Algeria	11	10	11	5	8
Andorra	6	7	6	3	3
Angola	11	10	11	5	8
Anguilla	12	12	12	5	6
Antigua and Barbuda		12	12	5	6
Argentina	12	13	12	5	6
Armenia	7	7	7	5	8
Aruba	12	12	12	5	6
Ascension			11	5	5
Australia	8	9	8	4	4
Austria	7	7	6	5	3
Azerbaijan	6	7	7	5	8
Bahamas	12	12	12	5	6
Bahrain	11	10	10	5	8
Bangladesh	9	8	8	5	8
Barbados	12	12	12	5	6
Belarus	6	6	7	5	5
Belgium	7	6	6	3	3

COUNTRY RATE GROUP LIST—Continued

Country	EMS	Air CP	Surface CP	Letter-Post	IPA ISAL [1]
Belize	12	12	12	5	6
Benin	11	10	10	5	8
Bermuda	12	13	12	5	6
Bhutan	8	9	9	5	8
Bolivia	12	13	12	5	6
Bosnia-Herzegovina	6	6	6	5	5
Botswana	10	11	11	5	8
Brazil	12	13	12	5	6
British Virgin Islands	.....	12	12	5	6
Brunei Darussalam	8	8	8	5	7
Bulgaria	6	6	7	5	5
Burkina Faso	10	10	11	5	8
Burma (Myanmar)	.....	6	6	5	8
Burundi	11	11	11	5	8
Cambodia	8	8	.....	5	7
Cameroon	10	11	11	5	8
Canada	1	1	1	1	1
Cape Verde	11	10	11	5	8
Cayman Islands	12	12	12	5	6
Central African Republic	11	11	11	5	8
Chad	10	10	.....	5	8
Chile	12	13	12	5	6
China	5	5	5	5	7
Colombia	12	12	12	5	6
Comoros Islands	.....	10	10	5	8
Congo (Brazzaville), Republic of the	11	10	10	5	8
Congo (Kinshasa), Democratic Republic of the	10	11	11	5	8
Costa Rica	12	12	12	5	6
Cote d'Ivoire (Ivory Coast)	10	11	11	5	8
Croatia	6	6	6	5	5
Cuba	.....	.....	.....	5	6
Cyprus	6	6	6	5	8
Czech Republic	7	6	7	5	5
Denmark	7	6	6	3	3
Djibouti	11	10	10	5	8
Dominica	12	12	12	5	6
Dominican Republic	12	12	12	5	6
Ecuador	12	13	12	5	6
Egypt	11	11	11	5	8
El Salvador	12	12	12	5	6
Equatorial Guinea	10	10	10	5	8
Eritrea	10	11	11	5	8
Estonia	6	7	7	5	5
Ethiopia	10	10	10	5	8
Falkland Islands	.....	.....	12	5	6
Faroe Islands	7	6	6	3	5
Fiji	8	8	8	5	7
Finland	7	6	6	3	3
France (includes Corsica & Monaco)	6	6	6	3	3
French Guiana	12	13	12	5	6
French Polynesia (includes Tahiti)	9	9	9	5	7
Gabon	11	10	11	5	8
Gambia	.....	11	11	5	8
Georgia, Republic of	7	7	7	5	8
Germany	7	6	6	3	3
Ghana	10	11	11	5	8
Gibraltar	.....	6	6	3	3
Great Britain and Northern Ireland	3	3	3	3	3
Greece	7	6	6	3	3
Greenland	.....	6	6	3	3
Grenada	12	12	12	5	6
Guadeloupe	12	13	12	5	6
Guatemala	12	12	12	5	6
Guinea	10	10	10	5	8
Guinea-Bissau	11	11	11	5	8
Guyana	12	12	12	5	6
Haiti	12	12	12	5	6
Honduras	12	13	12	5	6
Hong Kong	8	9	8	5	7
Hungary	7	6	6	5	5
Iceland	7	6	6	3	3
India	8	9	8	5	8

COUNTRY RATE GROUP LIST—Continued

Country	EMS	Air CP	Surface CP	Letter-Post	IPA ISAL [1]
Indonesia (includes East Timor)	8	8	8	5	7
Iran	.....	11	11	5	8
Iraq	11	11	11	5	8
Ireland	6	6	6	3	3
Israel	10	10	10	3	3
Italy	7	6	6	3	3
Jamaica	12	12	12	5	6
Japan	4	4	4	4	4
Jordan	10	10	10	5	8
Kazakhstan	6	6	7	5	8
Kenya	10	10	10	5	8
Kiribati	.....	8	8	5	7
Korea, Dem. People's Rep. of (North)	.....	.....	.....	5	7
Korea, Republic of (South)	8	9	8	5	7
Kuwait	11	10	10	5	8
Kyrgyzstan	6	6	7	5	5
Laos	9	9	9	5	7
Latvia	7	6	6	5	5
Lebanon	.....	10	.....	5	8
Lesotho	11	11	11	5	8
Liberia	10	10	10	5	8
Libya	.....	7	7	5	8
Liechtenstein	7	6	6	3	3
Lithuania	6	6	7	5	5
Luxembourg	6	6	6	3	3
Macao	8	9	9	5	5
Macedonia, Republic of	7	6	7	5	5
Madagascar	10	11	11	5	8
Malawi	10	11	11	5	8
Malaysia	8	8	8	5	7
Maldives	9	9	9	5	8
Mali	10	10	11	5	8
Malta	7	7	7	5	8
Martinique	12	13	12	5	6
Mauritania	10	10	11	5	8
Mauritius	10	10	10	5	8
Mexico	2	2	2	2	2
Moldova	6	7	7	5	8
Mongolia	9	9	9	5	7
Montserrat	.....	8	8	5	6
Morocco	11	10	11	5	8
Mozambique	10	11	11	5	8
Namibia	11	11	11	5	8
Nauru	8	8	8	5	7
Nepal	8	9	9	5	7
Netherlands	7	6	6	3	3
Netherlands Antilles	12	12	12	5	6
New Caledonia	9	9	9	5	7
New Zealand	8	8	8	4	4
Nicaragua	12	12	12	5	6
Niger	10	10	10	5	8
Nigeria	11	10	10	5	8
Norway	7	6	6	3	3
Oman	11	10	10	5	8
Pakistan	8	9	8	5	8
Panama	12	12	12	5	6
Papua New Guinea	8	9	9	5	7
Paraguay	12	13	12	5	6
Peru	12	13	12	5	6
Philippines	8	9	8	5	7
Pitcairn Island	.....	8	8	5	7
Poland	6	6	6	5	5
Portugal (includes Azores & Madeira Islands)	7	7	7	3	3
Qatar	11	10	10	5	8
Reunion	.....	13	12	5	8
Romania	6	7	7	5	5
Russia	7	7	7	5	5
Rwanda	10	10	11	5	8
Saint Christopher (St. Kitts) and Nevis	12	12	12	5	6
Saint Helena	.....	11	11	5	8
Saint Lucia	12	12	12	5	6
Saint Pierre & Miquelon	.....	6	6	5	6

COUNTRY RATE GROUP LIST—Continued

Country	EMS	Air CP	Surface CP	Letter-Post	IPA ISAL [1]
Saint Vincent and the Grenadines	12	13	12	5	6
San Marino	.....	9	8	3	3
Sao Tome and Principe	.....	10	10	5	5
Saudi Arabia	10	10	10	5	8
Senegal	11	10	10	5	8
Serbia-Montenegro (Yugoslavia)	7	7	7	5	5
Seychelles	10	10	11	5	8
Sierra Leone	10	10	10	5	8
Singapore	8	8	8	5	7
Slovak Republic (Slovakia)	6	6	6	5	5
Slovenia	7	6	7	5	5
Solomon Islands	8	8	8	5	7
Somalia	10	10	10	5	8
South Africa	11	11	10	5	8
Spain (includes Canary Islands)	6	7	6	3	3
Sri Lanka	8	9	8	5	8
Sudan	10	11	11	5	8
Suriname	.....	12	12	5	6
Swaziland	11	10	10	5	8
Sweden	7	7	7	3	3
Switzerland	7	6	6	3	3
Syria	10	10	10	5	8
Taiwan	8	9	8	5	7
Tajikistan	7	6	6	5	8
Tanzania	10	10	10	5	8
Thailand	9	8	8	5	7
Togo	11	10	10	5	8
Tonga	.....	8	8	5	7
Trinidad and Tobago	12	12	12	5	6
Tristan da Cunha	.....	10	11	5	8
Tunisia	11	10	10	5	8
Turkey	10	10	10	5	5
Turkmenistan	7	7	7	5	5
Turks and Caicos Islands	.....	12	12	5	6
Tuvalu	.....	8	8	5	7
Uganda	10	10	11	5	8
Ukraine	7	7	7	5	8
United Arab Emirates	10	10	10	5	8
Uruguay	12	13	12	5	6
Uzbekistan	.....	7	7	5	8
Vanuatu	8	8	8	5	7
Vatican City	.....	6	6	3	3
Venezuela	12	12	12	5	6
Vietnam	8	9	8	5	7
Wallis and Futuna Islands	.....	9	9	5	7
Western Samoa	8	8	8	5	7
Yemen	10	10	11	5	8
Zambia	10	10	11	5	8
Zimbabwe	11	11	11	5	8

[1] ISAL service not available to all countries. See Individual Country Listings for availablilty.

1 INTERNATIONAL MAIL SERVICES

110 General Information

111 Scope

This manual sets forth the conditions and procedures for the preparation and treatment of mail sent from the United States to other countries and the treatment of mail received from other countries. Its counterpart in the domestic mail service is the Domestic Mail Manual (DMM). Cross-references to the DMM are provided wherever domestic conditions and procedures apply to the preparation or treatment of international mail.

112 Mailer Responsibility

Regardless of any statement contained in this manual or the statements of any employee of the United States Postal Service, the burden rests with the mailer to ensure that he or she has complied with the prescribed laws and regulations governing domestic and international mail, both those of the United States and those of the destination country.

113 Individual Country Listings

Individual Country Listings (ICLs) provide information about conditions of mailing, postage rates, and special services for each country. ICLs are arranged alphabetically. Most subtitles are followed by a chapter citation in parentheses.

114 Availability

Customers may access this manual online at *http://pe.usps.gov.* A printed copy may be purchased from: Superintendent of Documents, U.S. Government Printing Office, 941 N. Capitol St., NE., Washington DC 20402–9371.

115 Official Correspondence

115.1 Correspondence With Headquarters

115.11 Operations

Questions regarding the proper classification, postal rates and fees, preparation requirements, claims and inquiries, special services, mailability, or any other classification aspect of international mail should be directed to local postal officials. Regulatory matters relating to international mail should be directed to the appropriate rates and classification service center (RCSC). See DMM G042 for a listing of RCSCs and service areas.

115.12 Policy and Representation

Correspondence concerning the following should be addressed to: Director, International Postal Affairs, U.S. Postal Service, 475 L'Enfant Plz. SW., Washington, DC 20260–6500.

a. Policy matters relating to international mail and international postal affairs.

b. Negotiation and interpretation of postal agreements.

c. Communications of a nonroutine nature from foreign postal officials.

d. Postal Service representation at international postal meetings.

e. Postal Service representation at meetings with other federal departments and agencies relating to international postal affairs.

f. Visits by foreign postal officials.

115.13 Transportation and Distribution

Correspondence concerning the transportation of international civil and military mail by surface and air, including the following, should be addressed to: Manager, International Operations, U.S. Postal Service, 475 L'Enfant Plz SW., Washington DC 20260–6500.

a. Containerization and plant loads.

b. Conveyance rates.

c. Designation of U.S. exchange offices.

d. Documentation.

e. Internal air conveyance, terminal, and transit charges.

f. Mode of transport.

g. Related forms and reports.

h. Routing.

i. Schedules and performance of U.S. and foreign flag carriers.

j. Distribution procedures and schemes.

115.14 Investigations

Correspondence relating to investigation of losses, depredations (robberies or riflings), and security of international mail should be addressed to: Chief Postal Inspector, Inspection Service, U.S. Postal Service, 475 L'Enfant Plz SW., Washington DC 20260–2100.

115.15 International Money Orders

Correspondence relating to international money orders, including operational procedures, accounting, cashing, and issuing, should be addressed to: International Money Order Section, Accounting Service Center, U.S. Postal Service, PO Box 14964, St. Louis, MO 63182–9421.

115.2 Correspondence With Foreign Postal Authorities

115.21 Correspondence Permitted

Correspondence is permitted between foreign postal authorities and Postal Inspectors-in-Charge and the postmasters (listed in 931.2) acting under the instructions for processing inquiries described in 928. U.S. exchange offices may correspond with their foreign counterparts only through bulletins of verification and exchanges of documentation.

115.22 Correspondence Not Permitted

In all other cases, postmasters, area offices, and other field units of the Postal Service must not correspond directly with postal officials in other countries, but must refer inquiries from those officials to Headquarters for attention. (See 115.1 for referral points for particular subjects.)

115.3 Correspondence With Foreign Individuals

115.31 Correspondence Permitted

Postmasters, area offices, and other field units of the Postal Service may reply directly to inquiries and engage in other necessary correspondence with individuals and firms in other countries.

115.32 Customer's Address

A customer's address may not be given out without the customer's consent.

120 Preparation for Mailing

121 Packaging—Sender's Responsibility

It is the responsibility of the sender to prepare items and to address them clearly and correctly. In preparing items for mailing, the sender must (1) use strong envelopes or durable packaging material, and (2) consider the nature of the articles being mailed and the distance they must travel to reach the addressee. (See DMM C010.2.0 for detailed instructions.)

122 Addressing

122.1 Destination Address

a. At least the entire right half of the address side of the envelope, package, or card should be reserved for the destination address, postage, labels, and postal notations.

b. Addresses must be printed in ink or typewritten. Pencil is unacceptable.

c. The name and address of addressee must be written legibly with roman letters and Arabic numbers, all placed lengthwise on one side of the item. For parcels, addresses should also be written on a separate slip enclosed in the parcel.

d. Addresses in Russian, Greek, Arabic, Hebrew, Cyrillic, Japanese, or Chinese characters must bear an interline translation in English of the names of the post office and country of destination. If the English translation is not known, the foreign language words must be spelled in roman characters (print or script). See 293.91 and 284.1 for an optional addressing procedure that applies only to direct country sacks of International Surface Air Lift (ISAL) mail or International Priority Airmail (IPA), respectively.

e. Mail may not be addressed to a person in one country ''in care of'' a person in another country.

f. The name of the sender and/or addressee may not be in initials except where they are an adopted trade name.

g. Mail may not be addressed to ''Boxholder'' or ''Householder.''

h. The following exceptional form of address, in French or a language known in the country of destination, may be used on printed matter: the addressee's name and ''or Occupant.'' Example: MR THOMAS CLARK OR OCCUPANT

i. The house number and street address or box number must be included when mail is addressed to towns or cities.

j. The address of items sent to General Delivery (in French, ''Poste Restante'') must indicate the name of the addressee. The use of initials; figures; simple, given names; or fictitious names is not permitted on articles addressed for general delivery.

k. The last line of the address must show only the country name, written in full (no abbreviations) and in capital letters. For example:

MR THOMAS CLARK
117 RUSSELL DRIVE
LONDON WIP 6HQ
ENGLAND

MS C P APPLE
APARTADO 3068
46807 PUERTO VALLARTA JALISCO
MEXICO

Exception: To Canada, either of the following address formats may be used when the postal delivery zone number is included in the address:

MS HELEN SAUNDERS
1010 CLEAR STREET
OTTAWA ON K1A 0B1
CANADA

MS HELEN SAUNDERS
1010 CLEAR STREET
OTTAWA ON CANADA
K1A 0B1

122.2 Return Address

The complete address of the sender, including ZIP Code and country of origin, should be shown in the upper-left corner of the address side of the envelope, package, or card. Only one return address may be used. It must be located so that it does not affect either the clarity of the address of destination or the application of service labels and notations (postmarks, etc.). Unregistered items bearing a return address in another country are accepted only at the sender's risk. In the case of bulk mailings, the return address must be in the country of mailing. For the purpose of this section, a ''bulk mailing'' is 200 or more pieces mailed at the same time by the sender.

123 Customs Forms

123.1 General

Only two customs declaration forms are used, as required under 123.6, for international mail: PS Form 2976, Customs—CN 22 (Old C 1) and Sender's Declaration (green label); and PS Form 2976–A, Customs Declaration and Dispatch Note CP 72 (Old C 2/CP 3/CP 2). PS Form 2976–E, Customs Declaration Envelope CP 91, is used with PS Form 2976–A for parcel post packages.

Note: The May 1996 and December 1996 versions of PS Form 2976 may no longer be used. Postal customers are now required to use the June 1997 version, or a subsequent version, whenever a mailing transaction necessitates the affixing of PS Form 2976. Except as provided in 123.3, it is also mandatory that they present a fully completed Sender's Declaration, which specifies both the Sender's Name and Address and the Addressee's Name and Address, at the time of mailing.

123.2 Availability

Customs declaration forms are available without charge at post offices. Upon request, mailers may receive a reasonable supply for mail preparation.

123.3 Privately Printed Forms

If authorized, mailers may privately print PS Forms 2976 and 2976–A. Privately printed forms must be identical in size, design, and color to the Postal Service forms, and each form must contain a unique code 128 barcode number that can be read by Postal Service equipment. Form specifications may be obtained from: Manager Pricing Costing and Classification, International Business, US Postal Service, 475 L'Enfant Plz SW., Washington, DC 20260–6500.

For authorization, mailers must submit at least two preproduction samples to the Manager, International Pricing, Costing, and Classification, at the above address, for review and approval. If three or more items are presented at one time, the mailer may omit printing the post office copy of PS Forms 2976 and 2976–A if a manifest of the items is provided. The manifest must contain the same mailer's certification statement and edition date printed on the Postal Service forms. Entries on the manifest must be typewritten or printed in ink or by ballpoint pen. The manifest must contain the sender's name and address; the sender's print authorization (*i.e.,* barcode) number; the edition date of the privately printed PS Form 2976 that is being affixed to the mailpieces; a signed and dated reproduction of the certification statement that is printed on the USPS Sender's Declaration; and a list of the foreign recipients' names and delivery addresses.

123.4 Nonpostal Forms

Certain items must bear one or more of the forms required by the nonpostal export regulations described in chapter 5.

123.5 Place of Mailing

Except as specified below, postal items that require a completed customs declaration form may not be deposited into a street collection box or a post office lobby drop. Such items must be tendered to a USPS employee at a post office or other location as designated by the postmaster. Otherwise, they will be returned to the sender for proper entry and acceptance.

Exception: The above restriction on the deposit of customs mail does not apply to Global Express Mail (EMS) shipments paid through an Express Mail corporate account. Those items may be deposited into a designated Express Mail collection box or post office lobby drop.

123.6 Required Usage

123.61 Conditions

Customs declaration PS Forms 2976 or 2976–A and 2976–E must be used as shown in Exhibit 123.61.

Exhibit 123.61

CUSTOMS DECLARATION FORMS USAGE

Mail category	Declared value	Required form	Comment
Global Express Guaranteed (documents)	All values	Mailing label (item 11FGG1X)	
Global Express Mail (EMS)	All values	Use 2976 or 2976–A unless otherwise specified.	See Note 3 at the bottom of this exhibit and the Individual Country Listings.
Global Priority Mail (GPM) items, airmail letter-post items, and economy letter-post items that: (a) Weigh less than 16 ounces and do not have potentially dutiable contents.	N/A	None	A known mailer, as defined in 123.62, may be exempt from affixing customs forms to nondutible mailpieces that weigh 16 ounces or more.

CUSTOMS DECLARATION FORMS USAGE—Continued

Mail category	Declared value	Required form	Comment
(b) Weigh 16 ounces or more; do not have potentially dutiable contents; and are entered by a known mailer			
Global Priority Mail (GPM) items, airmail letter-post items, and economy letter-post items that:	Under $400	Use 2976*	
(a) Weigh less than 16 ounces and have potentially dutiable contents.	$400 and over	Use 2976–A*	
(b) Weigh 16 ounces or more, regardless of their contents			
Free Matter for the Blind—Economy	Under $400 $400 and over	2976* 2976–A*	
Parcel Post—Airmail or Economy	Regardless of value	2976–A with 2976–E	Form 2976 (green label) may not be used on parcel post packages.
M-bag—Airmail or Economy (**Note:** An M-bag requires a customs form when it contains potentially dutiable printed matter, admissible merchandise items as defined in 261.22, or some combination thereof.)	Under $400 $400 and over	2976* 2976–A*	

*Placement of forms: For items under $400 in value, PS Form 2976 (green label) should be used and affixed to the outside of the item. If the value of the contents is $400 and over, the upper-left section of PS Form 2976 (green label) should be attached to the outside of the item and a separate PS Form 2976–A must be completed and enclosed inside the package.

Notes:

1. See 233.3 for the customs form requirements that specifically pertain to Global Priority Mail (GPM) items.

2. Bulk business products, including International Surface Air Lift (ISAL) and International Priority Airmail (IPA), require customs forms based on package contents and weight as specified above and as required by the country of destination.

3. Global Express Mail (EMS) shipments that contain correspondence, documents, or commercial papers are subject to the following customs form requirements:

a. When an EMS shipment with those categories of contents weighs less than 16 ounces, the determination as to whether or not to affix PS Form 2976 is dependent upon the conditions of mailing that are applicable to a particular destination country. Some countries require that a customs form be affixed to EMS shipments in that situation. Others require only that a ''BUSINESS PAPERS'' endorsement be placed on the wrapper of such shipments. See the Individual Country Listings for each country's specification in that area.

b. When the EMS shipment with those categories of contents weighs 16 ounces or more, PS Form 2976 is required.

123.62 Known Mailers

A ''known mailer'' is defined as:

a. A business customer who tenders volume mailings through a business mail entry unit (BMEU) or other bulk mail acceptance location; completes a statement of mailing at the time of entry; pays postage through an advance deposit account; and uses a permit imprint as an indication of postage payment. International Surface Air Lift (ISAL) and International Priority Airmail (IPA) customers are considered to be known mailers for this purpose.

b. A federal, state, or local government agency whose mail is regarded as official mail.

c. A contractor who sends out prepaid mail on behalf of a military service, provided the mail is endorsed ''Contents for Official Use—Exempt From Customs Requirements.''

Note: For aviation security purposes a known mailer may be exempt from providing customs declaration forms (as required in 123.61) on items weighing 16 ounces or more, unless required by the destination country. A known mailer must complete the declaration on the postage statement, certifying that all items in the mailing contain no dangerous material that is prohibited by postal regulations. Known mailers and other mailers must complete the necessary customs form when sending dutiable items or merchandise. International mail with meter postage is not considered from a known mailer.

123.63 Additional Security Controls

When the chief postal inspector determines that a unique, credible threat exists, the Postal Service may require a mailer to provide photo identification at the time of mailing. The signature on the identification must match the signature on the customs declaration form.

123.7 Completing Customs Forms

123.71 PS Form 2976, Customs—CN 22 (Old C 1) and Sender's Declaration (green label)

Exhibit 123.71 PS Form 2976, Customs—CN 22 (Old C 1) and Sender's Declaration (green label)

[Exhibit not included.]

123.711 Preparation by Sender

A sender completes PS Form 2976, Customs—CN 22 (Old C 1) and Sender's Declaration (green label), by:

a. Providing a complete description of each article in the item, even if it contains commercial samples, documents, gifts, or merchandise. General descriptions such as ''food,'' ''medicine,'' ''gifts,'' or ''clothing'' are not acceptable. The description must be in English, although an interline translation in another language is permitted.

b. Stating the exact quantity of each article in the item.

c. Declaring the value, in U.S. dollars, of each article in the item. The sender may declare that the contents have no value (declaring no value does not exempt an item from customs examination or charges in the destination country).

d. Showing the total weight of the item, if known.

e. Indicating in the appropriate check box on the form whether the item contains gifts, merchandise, or commercial samples. If not, the sender does not check these boxes.

f. Entering the sender's full name and address and the addressee's full name and address in the blocks indicated.

g. Signing and dating in the blocks indicated on both parts of the form. The sender's signature certifies that all entries are correct and that the item contains no dangerous material prohibited by postal regulations.

h. Affixing the form to the address side of the item and presenting it for mailing.

123.712 Acceptance by Postal Employee (PS Form 2976)

The Postal Service acceptance employee must:

a. Instruct the sender how to complete, legibly and accurately, the customs declaration form, as required. Failure to complete the form properly can delay delivery of the item or inconvenience the sender and addressee. Moreover, a false, misleading, or incomplete declaration can result in the seizure or return of the item and/or in criminal or civil penalties. The United States Postal Service assumes no responsibility for the accuracy of information that the sender enters on PS Form 2976.

b. Verify that the required information is entered on the form and that the sender has signed both parts of the form (the part affixed to the item and the part separated for postal records).

c. Enter the weight of the item on the form, if not already done.

d. Remove the post office copy of PS Form 2976 and advise the customer that a copy of the declaration will be retained as a record of mailing for 30 days.

e. Round stamp any uncancelled stamps, and if postage is paid by meter, round stamp the front of the piece near the meter postage.

Note: To comply with international mail aviation security procedures, any items weighing 16 ounces or more that are not accepted by an authorized employee, or where acceptance conditions are uncertain (*e.g.,* if received through a collection box or left on an unattended dock), must be endorsed properly with ''customer notification DDD–2 sticker'' and ''surface only'' and returned to the sender by surface transportation. Consult the most recent International Aviation Security Procedures for comprehensive acceptance procedures.

123.72 PS Form 2976–A, Customs Declaration and Dispatch Note CP 72 (Old C 2/CP 3/CP 2)

Exhibit 123.72 PS Form 2976–A, Customs Declaration and Dispatch Note CP 72 (Old C 2/CP 3/CP 2)

[Exhibit not included.]

123.721 Preparation by Sender

A sender completes PS Form 2976–A, Customs Declaration and Dispatch Note CP 72 (Old C 2/CP 3/CP 2), by:

a. Providing the names and addresses of the sender and addressee.

b. Providing information about the contents of the parcel or item. (If there is insufficient space on the customs declaration form to list all contents of the parcel or item, a second form is used to continue listing the contents. The first form must be annotated to indicate two forms. Both forms are placed into PS Form 2976–E (envelope).) The sender lists this information by:

(1) Providing a complete description of each article in the parcel or each item, even if it contains commercial samples, documents, gifts, or merchandise. General descriptions such as ''food,'' ''medicine,'' ''gifts,'' or ''clothing'' are not acceptable. The description must be in English, although an interline translation in another language is permitted.

(2) Showing the exact quantity of each article in the parcel or item.

(3) Declaring the value, in U.S. dollars, of each article in the parcel or item. The sender may declare that the contents have no value (declaring no value does not exempt the parcel or item from customs examination or charges in the destination country).

(4) Showing the net weight of each article in the parcel or item.

c. Indicating in the appropriate check box on the form whether the parcel or item contains commercial samples, documents, gifts, or merchandise. If not, the sender does not check these boxes.

d. For parcel post only, providing disposal instructions in the event that a parcel cannot be delivered. The sender checks the appropriate box on the form to indicate whether the parcel is to be returned, treated as abandoned, or forwarded to an alternate address. (Undeliverable parcels returned to the sender are subject to collection of return postage on delivery and any other charge assessed by the foreign postal authorities. The sender must check the box ''Abandon'' for any parcel for which the sender is unwilling to pay return postage.)

e. Signing and dating the form in the block indicated. The sender's signature certifies that all entries are correct and that the parcel or item contains no dangerous material prohibited by postal regulations.

f. Presenting the parcel post package or item for mailing at a post office and affixing PS Form 2976–A according to the class of mail, as follows:

(1) For parcel post, the sender must not place PS Form 2976–A inside PS Form 2976–E (envelope) before the postal acceptance employee completes the required information described in 123.722. After the postal employee completes PS Form 2976–A, the sender places the form inside PS Form 2976–E and affixes it to the outside of the parcel.

(2) For an item other than parcel post (*i.e.,* letter-post items) valued at $400 or more, the sender places PS Form 2976–A inside the item before the postal employee accepts the item. If the sender does not want to show on the outside wrapper the contents of letter-post items, the sender affixes the upper-left part of PS Form 2976 to the wrapper and completes PS Form 2976–A and encloses it in the item.

123.722 Acceptance by Postal Employee (PS Form 2976–A)

The Postal Service acceptance employee must:

a. Instruct the sender how to complete, legibly and accurately, PS Form 2976–A, Customs Declaration and Dispatch Note, as required. Failure to complete the form properly can delay delivery of the item or inconvenience the customer. Moreover, a false, misleading, or incomplete declaration can result in the seizure or return of the item and/or in criminal or civil penalties. The United States Postal Service assumes no responsibility for the accuracy of information that the sender enters on the form.

b. Verify that the required information is entered on the form and that the sender has signed both parts of the form (the part affixed to the item and the part separated for postal records). The sender's address on the mailpiece must match the sender's address on the customs declaration.

c. Complete an insurance receipt and affix the insured number label to the package, if the contents are to be insured. The postal employee enters on the form the insured number and the insured amount in U.S. dollars and SDRs. (See Exhibit 324.22 for conversion to SDRs.)

d. Weigh the parcel and enter on the form the gross weight and the amount of postage.

e. Postmark the third copy of the form in the appropriate place.

f. Remove the post office copy of the form and advise the customer that a copy of the declaration will be retained as a record of mailing for 30 days.

g. Round stamp any uncancelled stamps and, if postage is paid by meter, round stamp the front of the piece near the meter postage.

Note: To comply with international mail aviation security procedures, any items weighing 16 ounces or more that are not accepted by an authorized employee, or where acceptance conditions are uncertain (*e.g.,* if received through a collection box or left on an unattended dock) must be endorsed properly with ''customer notification DDD–2 sticker'' and ''surface only'' and returned to the sender by surface transportation. Consult the most recent International Aviation Security Procedures for comprehensive acceptance procedures.

123.73 PS Form 2976–E, Customs Declaration Envelope CP 91

PS Form 2976–E is a transparent plastic envelope designed for carriage of PS Form 2976–A for parcel post. Upon completion of the forms, the sender inserts the form into the envelope and affixes it to the outside of the parcel.

130 Mailability

131 General

131.1 Domestic Limits

All articles that are nonmailable in domestic mail are nonmailable in international mail. See DMM C020 and C030 and Publication 52, Acceptance of Hazardous, Restricted, or Perishable Matter.

131.2 International Limits

Many articles that are mailable in domestic mail are nonmailable in international mail. See section 630 of Publication 52 and the prohibitions and restrictions in the Individual Country Listings.

131.3 Individual Country Prohibitions and Restrictions

131.31 Information Available

Information on articles that are prohibited or restricted to individual countries appears under ''Prohibitions and Restrictions'' in the Individual Country Listings. These prohibitions and restrictions are based on information furnished by the countries concerned. Customers should inquire at the post office about specific prohibitions or restrictions.

131.32 Prohibited and Restricted Articles

Articles that are prohibited by the destination country are nonmailable. For mail known to contain articles restricted by the destination country, the sender must be informed of the restrictions and advised that the articles are subject to the import requirements of that country.

131.33 Return or Seizure of Mail

A country may return or seize mail containing articles prohibited or restricted within that country, whether or not notice of such prohibition or restriction has been provided to or published by the Postal Service.

131.34 Foreign Customs Information

The Postal Service does not maintain or provide information concerning the assessment of customs duty in other countries. Postal employees must not attempt to inform customers whether articles (gifts or commercial shipments) will be subject to customs duty. Postal employees may suggest to customers, however, that they inform the addressees in advance of the articles they intend to mail. Addressees can then obtain information from their local customs authorities. No provision is made for prepayment of customs duty on mail addressed for delivery in foreign countries.

131.4 Mailer Responsibility

Regardless of any statement in this manual or the statement of any employee of the United States Postal Service, the burden rests with the mailer to ensure compliance with domestic, international, and individual country rules and regulations for mailability.

131.5 Preparation for Mailing

131.51 General Packaging Requirements

Parcels of articles or goods must meet the requirements of DMM C010.2.0. The size and weight limits for each of several grades of fiberboard boxes are as specified for difficult loads in DMM C010.3.1c. Reinforce boxes in each of two directions around the package (see DMM C010.3.1g).

131.52 Special Packaging Requirements

Each mailer must meet the following special packaging requirements when mailing any of the following articles:

a. Fragile articles, such as glass, must be cushioned in accordance with DMM C010.4.0 to dissipate shock and pressure forces over as much of the surface of the item as possible.

b. Liquids must be packaged in accordance with DMM C010.2.4.

c. Fatty substances that do not easily liquefy, such as ointments, soft soap, resins, etc., as well as silkworm eggs, must be packaged in an interior container (box, cloth, or plastic bag) and placed in an outer shipping container of minimum 275-grade test strength.

d. Dry, powdered dyes, such as aniline, must be enclosed in sift-proof, sturdy tin or plastic boxes in an outer sift-proof shipping container. This container must have a minimum 275-grade test strength fiberboard or equivalent (see DMM C010.3.1).

132 Written, Printed, and Graphic Matter

132.1 Domestic Limits

All written, printed, and graphic matter that is described as nonmailable in DMM C030 is nonmailable internationally. This matter includes but is not limited to:

a. Advertisements for abortion (DMM C031.4.3).

b. Advertisements for motor vehicle master keys (DMM C031.4.2).

c. Copyright violations (DMM C031.5.2).

d. Fictitious matter (DMM C031.5.1).

e. Lottery matter (DMM C031.3.0).

f. Matter inciting violence (DMM C031.5.5).

g. Solicitations in the guise of bills or statements of account (DMM C031.1.0).

h. Solicitations or inducements for mailing harmful matter, radioactive materials, controlled substances, or intoxicating liquors (DMM C031.4.0).

Note: Immoral or obscene articles and advertisements for them are nonmailable.

132.2 Reply Cards and Envelopes

Items may not contain any card or envelope intended for reply purposes (addressed for return) if postage for that reply is denoted by U.S. stamps, domestic business reply, or other domestic indicia. International Business Reply Service (IBRS) cards and envelopes may be enclosed.

133 Improperly Addressed Mail

The following items are nonmailable in international mail:

a. Unaddressed items.

b. Items whose ultimate destination cannot be determined due to insufficient, illegible, or incorrect addressing.

c. Items bearing multiple addresses to the same or different countries.

134 Valuable Articles

134.1 List of Articles

The following valuable articles may be sent only in registered letter-post mailpieces or insured parcels and are not mailable in Global Express Mail (EMS) shipments (see 211.2).

a. Coins, banknotes, and currency notes (paper money).

b. Instruments payable to bearer. (The term ''instruments payable to bearer'' includes checks, drafts, or securities that can be legally cashed or easily negotiated by anyone who may come into possession of them. A check or draft payable to a specific payee is not regarded as payable to bearer unless the payee has endorsed it. If not endorsed, or if endorsed in favor of another specific payee, it is not regarded as payable to bearer.)

c. Traveler's checks.

d. Manufactured and unmanufactured platinum, gold, and silver.

e. Precious stones, jewels, jewelry, and other valuable articles.

Note: The term ''jewelry'' is generally understood to denote articles of more than nominal value. Inexpensive jewelry, such as tie clasps and costume jewelry, containing little or no precious metal, is not considered

to be jewelry within the meaning of this section and is accepted under the same conditions as other mailable merchandise to any country. Inexpensive jewelry is accepted to countries that prohibit jewelry, but only at the sender's risk.

134.2 Prohibitions

Individual countries prohibit or restrict some or all of the valuable items listed above. See the Prohibitions and Restrictions section in the Individual Country Listings.

135 Mailable Dangerous Goods

135.1 Biological Substances

135.11 General Conditions

Infectious and noninfectious biological substances are acceptable in the international mail subject to the provisions of DMM C023.10 and under the additional conditions specified in subsections below.

135.12 Type of Mail

Such substances may be sent only in registered airmail letter-post mailpieces.

135.13 Senders and Receivers

Such substances may be sent only by authorized laboratories to their foreign counterparts in those countries that have indicated a willingness to accept them.

Note: Countries distinguish between infectious and noninfectious biological substances and may prohibit one or the other or both. See Prohibitions in the Individual Country Listings.

135.2 Authorization

135.21 Authorized Institutions

Biological substances can be sent to or received by only the following types of institutions:

a. Laboratories of local, state, and federal government agencies.

b. Laboratories of federally licensed manufacturers of biological products derived from bacteria and viruses.

c. Laboratories affiliated with or operated by hospitals, universities, research facilities, and other teaching institutions.

d. Private laboratories licensed, certified, recognized, or approved by a public authority.

135.22 Request for Authorization

Qualifying institutions wishing to mail letter packages containing biological substances must submit a written request on its organizational letterhead to the following address: Manager Pricing Costing and Classification, International Business, U.S. Postal Service, 475 L'Enfant Plz. SW. 370 IBU, Washington, DC 20260–6500.

In its letter of application, the institution must indicate the nature of its work, the identity and qualifications of the prospective recipient, and the number of packages to be mailed. On approval of the application, the requisite number of biological substance mailing labels will be furnished by the Postal Service.

135.3 Packaging

135.31 Infectious Biological Substances

Infectious biological substances are limited to 50 milliliters (ml) per outside package and must be packaged in accordance with DMM C023.10.3 and as follows:

a. The second watertight container must also be surrounded by sufficient absorbent material to absorb the entire contents in case of leakage.

b. Screw cap closures must be reinforced with pressure-sensitive tape.

c. Infectious substances shipped in a refrigerated or frozen state must not be sent in an inner container with a metal screw cap. A heat-sealed skirted stopper or metal crimp seal must be used to prevent the contents from leaking.

d. When wet ice is used as a preservative, the following procedures must be followed:

(1) The ice must be placed between the second container and the outer packaging.

(2) The outer packaging should be designed with interior supports to prevent it from collapsing after the ice melts.

(3) The entire package must be leakproof.

135.32 Noninfectious Biological Substances

Noninfectious biological substances are limited to 1,000 ml per interior primary container and 4,000 ml per outer shipping container and must be packaged in accordance with DMM C023.10.4.

Note: Dry ice (carbon dioxide solid) is not acceptable in international mail.

135.4 Marking

135.41 Infectious Biological Substances

Letter-post items that contain infectious biological substances should be identified by a black and white diamond-shaped label with the division number 6.2 in the bottom, in addition to the Etiologic Agents/Biohazard Material label. The top half of the label must bear the designated symbol for infectious substances, while the bottom half must contain the following warning: ''INFECTIOUS SUBSTANCE. IN CASE OF DAMAGE OR LEAKAGE IMMEDIATELY NOTIFY THE PUBLIC HEALTH AUTHORITY.''

135.42 Noninfectious Biological Substances

Letter-post items that contain noninfectious biological substances must be identified by a violet-colored label bearing the prescribed symbol and French wording for perishable biological materials: ''MATIERES BIOLOGIQUES PERISSABLES.''

135.43 Shipping Descriptions

The appropriate shipping description must be marked on each package (*e.g.,* for infectious substances affecting humans, ''CONTAINS (NAME OF SUBSTANCE), UN2814,'' or for infectious substances affecting animals, ''CONTAINS (NAME OF SUBSTANCE), UN2900'').

135.44 Shipper's Declaration

If the material is to be transported by air, a shipper's declaration is also required. See Publication 52, Exhibit 622.1b.

135.5 Handling and Dispatch

135.51 Biological Substances

Letter-post items that contain perishable biological substances must be given careful yet expeditious handling from receipt through dispatch.

135.52 Infectious Substances

Shipments containing infectious substances must be segregated from other types of mail matter (*i.e.,* placed in separate sacks). PS Tag 44, Sack Contents Warning, must be attached to the outside of sacks to identify the hazardous nature of the contents. PS Tag 44 is for internal use only and must be removed from mail sacks, and the hazardous materials tendered to air carriers as outside pieces.

135.6 Radioactive Materials

Shipments containing radioactive materials are acceptable in the international mail subject to the provisions of DMM C023.9 (see also Publication 52, Acceptance of Hazardous, Restricted, or Perishable Matter) and under the following conditions:

a. Shipments may be sent only in registered letter-post mailpieces.

b. Shipments may be sent only to those countries that have expressed a willingness to accept radioactive materials. See Prohibitions and Restrictions in the Individual Country Listings.

c. Shipments must comply with the International Atomic Energy Agency rules and regulations.

d. Senders and recipients of radioactive materials must receive prior authorization from the appropriate regulatory authorities within their countries.

e. A white package label bearing the French words ''Matieres Radioactives'' (radioactive materials) must be applied to the address side of each package containing radioactive materials. Senders are responsible for supplying and affixing this label to the package.

f. The package must also bear the following endorsements in bold letters: ''RETURN TO SENDER IN CASE OF NONDELIVERY'' and ''RADIOACTIVE MATERIALS, QUANTITIES PERMITTED FOR MOVEMENT BY POST.''

136 Nonmailable Dangerous Goods

The following dangerous goods (hazardous materials, as defined in DMM C023) are prohibited in the international mail:

a. Explosives or explosive devices (DMM C023.2.0).

b. Flammable materials (DMM C023.3.0).

(1) Pyrophoric, flammable, or combustible liquids with a closed cup flash point below 200°F (DMM C023.3.1 and C023.3.2).

(2) Flammable solids, including matches (DMM C023.3.3 and C023.3.5).

c. Oxidizers (DMM C023.3.4).

d. Corrosives, liquid or solid (DMM C023.4.0).

e. Compressed gases (DMM C023.5.0).

(1) Flammable.

(2) Nonflammable with an absolute pressure exceeding 40 psi at 70° F or 104 psi at 130°F.

f. Poisons, irritants, controlled substances, and drug paraphernalia (DMM C023.6.0, C023.7.0, and C023.8.0).

g. Magnetized material with a magnetic field strength of .002 gauss or more at a distance of 7 feet (DMM C023.11.1).

h. Dry ice (carbon dioxide solid) (DMM C023.11.2).

137 Other Restricted Materials

The items listed under DMM C024.7.0 through C024.14.0 are prohibited in the international mail, except as specified in the Individual Country Listings. This includes intoxicating liquor, matter emitting obnoxious odor (liquids and powders), motor vehicle master keys, battery-powered devices, odd-shaped items in envelopes, and abortive and contraceptive devices.

138 Firearms, Knives, and Sharp Instruments

The items listed under DMM C024.1.0 through C024.5.0 may be mailed to certain countries under the conditions specified in the Individual Country Listings. See 540 for U.S. Department of State licensing requirements applicable to the international mailing of arms or implements of war, component parts, and related technical data.

139 Perishable Matter

139.1 Animals

All live or dead animals are nonmailable, except the following:

a. Live bees, leeches, and silkworms (DMM C022.3.7 and C022.3.8).

b. Dead insects or reptiles, when thoroughly dried.

c. Parasites and predators of injurious insects, if the following conditions are met:

(1) They are admissible in the domestic mail.

(2) They are useful in controlling harmful insects.

(3) They are exchanged by officially recognized scientific or health agencies.

(4) They are sent in letter-post packages.

(5) Mailable animals must be in containers conforming to the requirements in the DMM.

139.2 Plants

139.21 General Restrictions

Plants, seeds, and plant materials, including fruits and vegetables, are subject to the provisions of DMM C022; Publication 14, Prohibitions and Restrictions on Mailing Animals, Plants, and Related Products; and the quarantine regulations of the country of destination. Customers can obtain information from the U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) Plant Protection and Quarantine (PPQ) Programs at: USDA Aphis PPQ, 4700 River Rd., Riverdale, Md 20737–1228.

139.22 Tobacco Seeds and Tobacco Plants

It is unlawful to export any tobacco seed or live tobacco plants without a written permit granted by the U.S. Secretary of Agriculture. See 560 for procedures and processing requirements.

139.3 Eggs

139.31 Restrictions

Eggs may be sent only by parcel post. See 550 for nonpostal regulations on dried whole eggs.

139.32 Packaging

Eggs must be packaged in the following manner:

a. Eggs mailed to any country except Canada must be placed in a metal egg container. Each egg must be packed in cushioning material. The metal egg container must be enclosed in an outer container of wood with cushioning packed between the two containers.

b. Eggs mailed to Canada may be packed either as prescribed in 139.32a or in a box of rigid material with a tight-fitting lid. Each egg must be wrapped in protective material and placed on end. Vacant spaces in the box must be filled with packing material to prevent the eggs from striking each other or the box.

139.4 Food and Other Perishable Articles

Fruits, vegetables, fresh meats, and other articles that easily decompose or that cannot reasonably be expected to reach their destination without spoiling are nonmailable.

140 International Mail Categories

141 Definitions

141.1 General

There are five principal categories of international mail that are primarily differentiated from one another by speed of service. They are Global Express Guaranteed (GXG), Global Express Mail (EMS), Global Priority Mail (GPM), airmail, and economy mail.

141.2 Global Express Guaranteed

Global Express Guaranteed is the U.S. Postal Service's premium international mail service. GXG is an expedited delivery service that is the product of a business alliance between the U.S. Postal Service and DHL Worldwide Express, Inc. It provides reliable, high-speed, time-definite service from designated U.S. ZIP Code areas to locations in most destination countries and territorial possessions. GXG is guaranteed to meet destination-specific delivery standards or the postage will be refunded. If a shipment is lost or damaged, liability for document reconstruction is limited to a maximum of $100. The maximum weight is 70 pounds to all destinations.

141.3 Global Express Mail

The next level of service, in terms of speed and value-added features, is Global Express Mail (EMS). EMS is an expedited mail service that can be used to send documents and merchandise to most of the country locations that are individually listed in this publication. EMS insurance coverage against loss, damage, or rifling, up to a maximum of

$500, is provided at no additional charge. Additional merchandise insurance coverage up to $5,000 may be purchased at the sender's option. However, document reconstruction insurance coverage is limited to a maximum of $500 per shipment. Return receipt service is available, at no additional charge, for EMS shipments that are sent to a limited number of countries. See 211.4. Country specific maximum weight limits range from 22 pounds to 70 pounds. See the Individual Country Listings. Although EMS shipments are supposed to receive the most expeditious handling available in the destination country, they are not subject to a postage refund guarantee if a delivery delay occurs.

141.4 Global Priority Mail

Global Priority Mail is an accelerated airmail service that provides customers with a reliable and economical means of sending correspondence, documents, printed matter, and light-weight merchandise items to the foreign destinations that are listed in 231.42. GPM items receive priority handling within the U.S. Postal Service and the postal administration of the country of destination. Senders can pay flat-rate postage by placing their contents into a standardized GPM envelope; or they can elect to pay variable weight postage by affixing a GPM sticker to a tyvek envelope, box, or other customer-furnished packaging. The maximum weight limit for GPM items is 4 pounds. Special services, such as registry, return receipt, recorded delivery, and insurance, are not available in combination with GPM service.

141.5 Airmail

Subject to the following definitions, airmail service may be used to send both letter-post items and parcel post packages to most foreign countries. Letter-post is a generic term for mailpieces of differing shapes, sizes, and contents, which weigh 4 pounds or less, that are subject to the provisions of the Universal Postal Union Convention. Letter-post items may contain any mailable matter that is not prohibited by the destination country. At the sender's option, special services, such as registry, return receipt, and recorded delivery, may be added on a country-specific basis.

Note: The letter-post classification encompasses all of the classes of international mail (*i.e.,* letters and letter packages, post and postal cards, aerogrammes, printed matter, and small packets) that were formerly categorized as LC (letters and cards) and AO (other articles) respectively. Parcel post, which is otherwise referred to as CP mail, is differentiated from letter-post because it is governed by the provisions of the UPU Postal Parcels Agreement. That classification is primarily designed to accommodate larger and heavier shipments, whose size and/or weight transcend the established limitations for letter-post items. It also affords senders the opportunity to obtain optional mailing services, such as insurance coverage and return receipt, which would otherwise be unavailable.

141.6 Economy Mail

Mailpieces that are classified as letter-post or parcel post can also be entered as economy mail. Under that classification, they are subject to the same regulatory requirements and conditions of mailing as the airmail items. The substantive differences between the two levels of service primarily relate to mode of transportation (air or surface), speed of service, and price.

142 Envelope and Card Specifications

142.1 Color

Only light-colored envelopes and cards that do not interfere with the reading of the address and postmark should be used. Do not use brilliant colors.

142.2 Quality

Envelopes and cards should be constructed of paper strong enough to withstand normal handling. Highly glazed paper or paper with an overall design is not satisfactory.

142.3 Shape

Rectangular.

142.4 Minimum Size

a. Length: 5½ inches.
b. Height: 3½ inches.

142.5 Window Envelopes

Window envelopes may be used under the following conditions:

a. The address window must be parallel with the length of the envelope.

b. The address window must be in the lower portion of the address side.

c. Nothing but the name, address, and any key number used by the mailer may appear through the address window.

d. The return address should appear in the upper-left corner. If there is no return address and the delivery address does not show through the window, the piece will be handled as undeliverable mail.

e. The address disclosed through the window must be on white paper or paper of a very light color.

f. When used for registered mail, window envelopes must conform with the conditions in DMM S911.3.7.

g. Open panel envelopes (*i.e.,* those in which the panel is not covered with a transparent material) are not acceptable in international mail.

142.6 Bordered Envelopes and Cards

Envelopes and cards that have green-colored bars or red- and blue-striped borders may be used for the sending of airmail letter-post items.

143 Official Mail

143.1 Mailings by Federal Agencies

Official mail (sent by federal agencies and departments listed in USPS Handbook DM–103, Official Mail) that bears the indicia prescribed in DMM E060.6.0 through E060.8.0 may be sent to foreign destinations. Such items are subject to the postage payment requirements, weight and size limits, customs form requirements, and general conditions for mailing that otherwise apply to the class and category of the international mail being sent.

143.2 USPS Mailings

International mailpieces that are sent by or on behalf of the U.S. Postal Service must bear the prescribed G–10 permit indicia. USPS official mail is subject to a 66-pound weight limit except for Global Express Mail (EMS) shipments going to Austria, Haiti, and Serbia-Montenegro and Global Express Guaranteed (GXG) shipments going to all authorized destination countries, which have a 70-pound weight limit.

143.3 Mail of a Former President and Surviving Spouse of a Former President

All nonpolitical mail of former U.S. Presidents, and of the surviving spouse of a former President, must be accepted without prepayment of postage if it bears the written signature of the sender, or a facsimile signature and the words ''POSTAGE AND FEES PAID'' in the upper-right corner of the address side.

143.4 General Secretariat of the Organization of American States

a. Ordinary (unregistered) economy mail and airmail letter-post items bearing the return address of the Organization of American States (OAS) General Secretariat and weighing not more than 4 pounds are accepted without postage when addressed to the OAS member countries listed in 143.4c.

b. Airmail service for items other than letter-post items and other special services may not be provided for OAS General Secretariat official mail without the prepayment of air postage or the fee for the special service requested.

c. The following countries are members of the OAS:

Antigua and Barbuda
Argentina
Bahamas
Barbados
Bolivia
Brazil
Canada
Chile
Colombia
Costa Rica
Dominica
Dominican Republic
Ecuador
El Salvador
Grenada
Guatemala
Haiti
Honduras
Jamaica
Mexico
Nicaragua
Panama
Paraguay
Peru
St. Christopher and Nevis
St. Lucia
St. Vincent and the Grenadines
Suriname
Trinidad and Tobago
United States
Uruguay
Venezuela

143.5 Pan American Sanitary Bureau Mail

a. Ordinary (unregistered) economy mail and all letter-post items bearing the return address of the bureau and weighing not more than 4 pounds is accepted without postage affixed when addressed to an OAS member country listed in 143.4c or to Cuba.

b. Airmail service for items other than letter-post items and other special services may not be provided for bureau official mail without prepayment of air postage or of the fee for the special service requested.

150 Postage

151 Postage Rates

See Individual Country Listings.

152 Payment Methods

152.1 Prepayment

Each item must be fully prepaid to ensure prompt dispatch and to avoid assessment of charges against the addressee. For the treatment of shortpaid and unpaid mail, see 420.

152.2 Stamps

a. Postage and fees for special services (see chapter 3) may be paid by means of U.S. postage stamps, postage meter stamps, or postage validation imprinter (PVI) labels. PVIs are acceptable for all international mail transactions.

b. Precanceled stamps may be used under the conditions applicable to domestic mail (see DMM P023).

c. Airmail stamps may not be used on economy items.

d. Postal customers may affix nondenominated postage stamps (*e.g.,* the ''G'' stamp) to international mailpieces except for those that bear a uniquely domestic rate marking, such as First-Class Presort, Bulk Rate, Presorted Standard, or Nonprofit Organization. The nondenominated Breast Cancer Research semipostal stamp, which has a postage value that is equivalent to the domestic rate for a 1-ounce First-Class letter, may also be used for international mailing purposes. See DMM P022.1.6.

Note: See DMM P022.2.2 for stamps not valid as postage.

152.3 Permit Imprint

Exhibit 152.3 Permit Imprints

[Exhibit not included.]

152.31 Conditions of Use

Postage may be paid by permit imprints, subject to the general conditions stated in DMM P040 and P710.2.4. Postage charges are computed on PS Form 3651, International Statement of Mailing with Permit Imprints, or other postage statements as required.

152.32 Minimum Number of Pieces

A single mailing must consist of not less than 200 pieces identical in size and weight and addressed to foreign destinations, unless otherwise specified.

Note: The pieces comprising the mailing do not have to be addressed to a single country.

Exception: See 293.2.

152.33 Required Format

Permit imprints for international mail must be prepared in one of the forms shown in Exhibit 152.3. No variations or additions such as Bulk Rate, Presorted Standard, Enhanced Carrier Route Sort, Automation Rate, or Nonprofit Organization are allowed.

152.4 Publishers' Periodicals

Postage on publishers' periodicals (Periodicals Mail) mailed by publishers or registered news agents who are domestic Periodicals Mail permit holders may be paid as provided in 242.22 and 242.23.

153 Placement of Postage

a. Postage stamps and postage-paid impressions must be applied to the address side of mail in the upper-right corner. The postage meter stamp, postage validation imprinter (PVI) label, or permit may be affixed directly on the mailpiece or on the wrapper when plastic wrap is used.

b. Nonpostage stamps, labels resembling postage stamps, or impressions resembling postage-paid impressions must not be placed on the address side of international mailpieces.

154 Remailed Items

New postage is required when mailpieces are reentered after having been returned to the sender by a foreign postal administration.

2 CONDITIONS FOR MAILING

210 Global Express Guaranteed

* * * * *

220 Global Express Mail

221 Description

221.1 General

Global Express Mail (EMS) is a reliable high-speed mail service available to certain countries (see Individual Country Listings for service availability). There is no service guarantee for Global Express Mail. Global Express Mail is available at designated postal facilities who are authorized to accept Express Mail.

221.2 Allowable Contents

Any item not prohibited in international mail is allowed in EMS. Refer to the Country Conditions for Mailing in the Individual Country Listings for individual country prohibitions. International postal money orders are admissible in EMS. However, they are negotiable only if the proper form is used. The following items are prohibited in all EMS shipments: coins; banknotes; currency notes (paper money); securities of any kind payable to bearer; traveler's checks; platinum, gold, and silver (manufactured or not); precious stones; jewelry; and other valuable articles.

221.3 Insurance and Indemnity

Global Express Mail items are insured against loss, damage, or rifling at no additional cost. Indemnity will be paid by the U.S. Postal Service as provided in DMM S010 and S500. However, Global Express Mail items are not insured against delay in delivery. Neither indemnity payments nor postage refunds will be made in the event of delay.

221.31 EMS Merchandise Insurance

Global Express Mail merchandise insurance coverage against loss, damage, or rifling is provided up to $500 at no additional charge. Additional insurance coverage above $500 may be purchased

at the sender's option. The fee for optional Global Express Mail merchandise insurance coverage is $1.00 for each $100 or fraction thereof, up to a maximum of $5,000 per shipment. See the Individual Country Listings for the applicable Global Express Mail insurance fees.

221.32 Purchase of Additional Insurance

When a mailer wants to insure an EMS merchandise shipment for more than $500, the insurance fee is entered in the block marked ''Insurance'' on the mailing label. Coverage is limited to the actual value of the contents, regardless of the fee paid, or the highest insurance value increment for which the fee is fully paid, whichever is lower. See DMM S500.

221.33 Document Reconstruction Insurance

Nonnegotiable EMS documents are insured against loss, damage, or rifling at no additional cost to the mailer. Document reconstruction insurance coverage is limited to a maximum of $500 per shipment. Additional coverage beyond the $500 indemnity limit is not available. See DMM S010 and S500.

Note: EMS indemnity payments are subject to the provisions of DMM S010, DMM S500, and IMM 935. Neither indemnity payments nor postage refunds are payable for delayed delivery.

221.4 Return Receipt Service

Return receipt service is available for Global Express Mail items only to the following countries at no additional charge (see 340 for preparation procedures):

Argentina
Australia
Bahrain
Belgium
Germany
Greece
Guinea-Bissau
Hong Kong
Korea, Republic of (South)
Kuwait
Liechtenstein
Pakistan
Qatar
Singapore
South Africa
Spain
Switzerland
Taiwan
Tunisia

222 Postage

222.1 Rates

222.11 Country Rates

See the Individual Country Listings for countries that offer Global Express Mail.

222.12 Express Mail Corporate Account Rates

Global Express Mail (EMS) rates will be reduced by 5 percent for all payments made through an Express Mail corporate account (EMCA) or through the federal agency payment system. The discount applies only to the postage portion of EMS rates. It does not apply to the pickup service charge, additional merchandise insurance coverage fees, or shipments made under an International Customized Mail agreement.

222.2 Payment of Postage

222.21 Methods of Payment

Global Express Mail items may be paid for with postage stamps, postage validation imprinter (PVI) labels, postage meter stamps, or through the use of an Express Mail corporate account.

222.22 Application for Corporate Account

A written application is required before mailing can be made under a corporate account (see DMM P500).

222.23 Official Mail

222.231 Mailings by Federal Agencies

Global Express Mail shipments that are entered by federal agencies and departments are subject to the same postage payment requirements, weight and size limits, customs form requirements, and general conditions for mailing as EMS shipments that are originated by nongovernmental entities.

222.232 USPS Mailings

EMS shipments mailed by U.S. Postal Service entities must bear the G–10 permit indicia that is prescribed for all USPS official mail. There is a 66-pound weight limit for USPS-originated EMS shipments going to all destination countries, unless the destination country has a higher weight limit. See 143.2.

222.24 Pickup Service

On-call and scheduled pickup services are available for an added charge of $10.25 for each pickup stop, regardless of the number of pieces picked up. Only one pickup fee will be charged if domestic Express Mail, domestic Priority Mail, international parcel post, and/or domestic Parcel Post is picked up at the same time. No pickup fee will be charged when Global Express Mail is picked up during a delivery stop or during a scheduled stop made to collect other mail not subject to a pickup fee. Pickup service is provided in accordance with DMM D010.

223 Weight and Size Limits

223.1 Weight Limits

See the Individual Country Listings for countries that offer Global Express Mail.

223.2 Size Limits

a. Maximum length: 36 inches.
b. Maximum length and girth combined: 79 inches.

Note: For exceptional size limits, see Individual Country Listings for countries that offer Global Express Mail.

224 Preparation Requirements

224.1 Preparation by Sender

a. Complete the ''From'' and ''To'' portions of Label 11–B, Express Mail Post Office to Addressee, for each piece of mail and affix the completed label to each piece.
b. Prepare and affix the appropriate customs form to the piece of mail. See the Individual Country Listings for countries that offer Global Express Mail for required customs declarations.

224.2 Preparation by Acceptance Employee

a. Check the address label to ensure that the sender has completed the ''From'' and ''To'' portions.
b. Verify that customer has properly completed the appropriate customs declaration form, if required.
c. Enter the originating facility ZIP Code; date and time received; weight; merchandise insurance fee, if applicable (see 211.52); total postage; and initial. Ensure that the correct amount of postage is affixed to the mailpiece.
d. Give the Customer Receipt copy to the mailer and retain the Finance Copy. Peel off the backing of the remaining portion and affix it to the item.
e. After acceptance, place each item in the appropriate working pouch and forward it to the international exchange office authorized to dispatch Global Express Mail to that destination. (See Handbook T–5, International Mail Operators.)

224.3 Customs Forms Required

See the Individual Country Listings for countries that offer Global Express Mail. Mailers are responsible for determining customs requirements and complying with them. Mailers should confirm before mailing merchandise whether an import license is required for that class of goods.

230 Global Priority Mail

231 Description

231.1 General

Global Priority Mail is an expedited airmail letter-post service providing fast,

reliable, and economical delivery of all mailable items not over 4 pounds. Global Priority Mail items receive priority handling in the United States and in destination countries. Service is available only to destination countries identified in 231.42, from post offices identified in 231.41.

231.2 Allowable Contents

All items which may be sent as letter-post mail (see 241.1) are accepted in Global Priority Mail, provided that the contents are mailable and fit securely in the envelope or box. Items must fit comfortably within the envelope or box without distorting or bursting the container. Do not use excessive tape to keep the envelope or box from bursting. Use only one piece of tape to secure the flap. Global Priority Mail items may contain dutiable merchandise unless the country of destination specifically prohibits dutiable merchandise in letters. Any item that is prohibited in international mail is prohibited in Global Priority Mail. Refer to the Country Conditions for Mailing in the Individual Country Listings for individual country prohibitions.

231.3 Service Standards

Global Priority Mail is accepted at all USPS retail locations. There is a four-day delivery objective for GPM items that are deposited at postal locations linked to the USPS Eagle network (see Exhibit 231.41. When GPM items are tendered at ''off-net'' locations (all other locations), it generally requires an additional one to two business days to obtain delivery in the destination country. Within each of the listed service areas, prepaid GPM items may be tendered to a letter carrier, deposited in an Express Mail street collection box, or placed in a post office or lobby mail drop.

Note: GPM mailings consisting of 200 or more identical pieces, which bear a permit imprint, must be deposited at a locally designated business mail entry unit.

231.4 Service Areas

231.41 Origins

Global Priority Mail service is available only through the designated post offices and the additional post offices listed in Exhibits 231.41a and b. Pickup Service is available for an additional fee. (See 236.3.)

Exhibit 231.41a GPM Acceptance Locations Linked to the Eagle Network (''On-Net'')

[Exhibit not included. Formerly Exhibit 226.32a.]

Exhibit 231.41b GPM Acceptance Locations Not Linked to the Eagle Network (''Off-Net'')

[Exhibit not included. Formerly Exhibit 226.32b.]

231.42 Destinations

Global Priority Mail service is available to the destination countries listed below. Those countries that have service only to designated locations are identified with a footnote.

[Table not included.]

Exhibit 231.42 GPM Locations—China

[Exhibit not included. Formerly Exhibit 226.2.]

232 Postage

232.1 Rates

232.11 Flat-Rate Envelope Postage Rates

Each Global Priority Mail flat-rate envelope is charged at a flat rate. The rate is based on the geographic rate zone regardless of its actual weight. Postage is required for each piece. (See Exhibit 232.11.)

EXHIBIT 232.11—FLAT-RATE ENVELOPE POSTAGE RATES

Envelope	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3	Rate group 4 (Australia, Japan, New Zealand)	Rate group 5
Small	$4.00	$4.00	$5.00	$5.00	$5.00
Large	7.00	7.00	9.00	9.00	9.00

232.12 Variable-Weight Option Postage Rates

Global Priority Mail variable-weight rates are calculated in half-pound (or fraction thereof) increments based on the weight of each piece (up to 4 pounds) and the destination geographic rate zone. Each GPM mailpiece that is paid for on that basis must have a variable-weight sticker affixed to the address side or be enclosed in a USPS-furnished flat-size (Tyvek) envelope or cardboard box that is specifically intended for the transmittal of GPM items. (See Exhibit 232.12.)

EXHIBIT 232.12—VARIABLE-WEIGHT OPTION POSTAGE RATES

Weight not over (lbs.)	Rate group 1 (Canada)	Rate group 2 (Mexico)	Rate group 3	Rate group 4 (Australia, Japan, New Zealand)	Rate group 5
.5	$6.00	$7.00	$9.00	$8.00	$8.00
1	8.00	9.00	11.00	10.00	12.00
1.5	9.00	10.00	13.00	12.00	14.00
2	11.00	12.00	16.00	15.00	17.00
2.5	12.00	13.00	19.00	18.00	20.00
3	14.00	15.00	22.00	21.00	23.00
3.5	16.00	17.00	24.00	23.00	25.00
4	18.00	19.00	27.00	26.00	28.00

232.2 Payment of Postage

232.21 Methods of Payment

Nonidentical-weight piece mailings must have the applicable postage affixed by adhesive stamps, meter stamps, or, if presented at a post office, postal validation imprinter (PVI labels). Identical-weight piece mailings may be paid by meter stamps, adhesive stamps, PVI labels, or permit imprint, subject to certain standards. To use a permit imprint, a mailing must consist of 200 or more identical-weight pieces. Mailers may use a permit imprint with nonidentical pieces only if authorized by the USPS under a Manifest Mailing System (MMS), as specified in DMM P710.

232.22 Permit Imprint Content and Format

All permit imprints on Global Priority Mail must show city and state, ''Global Priority Mail,'' ''U.S. Postage Paid,'' and permit number. They may show the mailing date, amount of postage paid, or the number of ounces.

232.23 Postage Meter Stamps

At a minimum, a meter stamp must show in the postmark the month, day, and year; city and state designation of the licensing post office; the number; and the amount of postage. See DMM P030.4.6.

233 Preparation Requirements

233.1 Addressing

All items must bear the complete delivery address of the addressee and the full name (no abbreviations) of the destination country. See 122.

233.2 Packaging

Flat-rate Global Priority Mail must be enclosed in a designated USPS envelope (EP–15A or EP–15B). Variable-weight Global Priority Mail must be tendered in a USPS Tyvek envelope (EP–15GP), a USPS Global Priority Mail box (O1099), or have a Global Priority Mail sticker (DEC–10) affixed to the address side of the mailpiece. GPM mailing supplies can be obtained by calling 800–222–1811. Unmarked pieces are subject to regular airmail letter-post rates and treatment.

233.3 Customs Form Required

If the GPM mailpiece weighs * * *	And it contains * * *	The required customs form(s) are * * *
Less than 16 ounces	Documents, business papers, or non-dutiable printed matter.	No form required.
	Dutiable printed matter or merchandise items with a value under $400.	Affix a completed PS Form 2976 (green label) to the exterior of the mailpiece.
	Merchandise items with a value of $400 or more	Place a completed PS Form 2976–A inside the packaging. Affix the upper-left section of PS Form 2976 (green label) to the exterior of the mailpiece.
16 ounces or more	Documents, business papers, dutiable and non-dutiable printed matter, or merchandise items with a value under $400.	Affix a completed PS Form 2976 (green label) to the exterior of the mailpiece.
	Merchandise items with a value of $400 or more	Place a completed PS Form 2976–A inside the packaging. Affix the upper-left section of PS Form 2976 (green label) to the exterior of the mailpiece.

Note: GPM customers who send flat-rate envelopes or variable-weight option mailpieces that weigh 16 ounces or more, bear a permit imprint, and contain correspondence, business papers, or nondutiable printed matter are eligible for the known mailer exemption that is referenced in 123.62.

234 Size and Weight Limits

234.1 Size Limits

234.11 Flat-Rate Envelope Sizes

a. Small—6 x 10 inches.
b. Large—9½ x 12½ inches.

234.12 Package Sizes for Variable-Weight Option

a. Minimum length and height: 5½ x 3½ inches.
b. Minimum depth (thickness): .007 inches.
c. Maximum length: 24 inches.
d. Maximum length, height, and depth (thickness) combined: 36 inches.

234.13 Rolls

a. Minimum length: 4 inches.
b. Minimum length plus twice the diameter combined: 6¾ inches.
c. Maximum length: 36 inches.
d. Maximum length plus twice the diameter combined: 42 inches.

234.14 Global Priority Mail Tyvek Envelope

The dimensions of the Global Priority Mail Tyvek envelope are 12 x 15½ inches.

234.2 Weight Limit

All Global Priority Mail items are subject to a 4-pound weight limit.

235 Special Services

Mailers may obtain certificates of mailing (see 310). No other special services, such as registry, insurance, restricted delivery, return receipt, or recorded delivery, are available.

236 Mail Entry

236.1 Preparation

Unless otherwise instructed by USPS acceptance personnel, customers who tender Global Priority Mail at a business mail entry unit (BMEU) must separate the items by destination rate group and by flat-rate envelope size (*i.e.,* small or large), if applicable. Mailpieces that bear a permit imprint or a postage meter impression must be faced in the same direction.

236.2 Deposit of Mail

Global Priority Mail flat-rate envelopes and variable-weight option mailpieces, which bear either stamped or metered postage, may be deposited wherever Express Mail is accepted. This includes acceptance by a retail employee at a post office counter; acceptance by a letter carrier while a delivery route is being served; deposit into an Express Mail street collection box if the mailpiece weighs less than 16 ounces; or by telephoning 800–222–1811 to request pickup at the customer's premises. Global Priority Mail that bears a permit imprint must be deposited at a business mail entry unit or other acceptance point that is authorized by the postmaster. Global Priority Mail that bears a meter stamp or impression must be deposited at a location that is under the jurisdiction of the licensing post office, except as permitted under DMM P030.

236.3 Pickup Service

On call and scheduled pickup services are available for Global Priority Mail acceptance cities. There is a charge of $10.25 for each pickup stop, regardless of the number of pieces picked up. (See DMM D010 for standards of pickup service.) Pickup service is not available for GPM items that bear a permit imprint and that are paid for through an advance deposit account.

240 Letter-Post

241 Description

241.1 Definition

The letter-post classification encompasses all of the classes of international mail: letters and letter packages, post and postal cards, aerogrammes, printed matter, and small packets that were formerly categorized as LC (letters and cards) and AO (other articles).

241.2 Mailable Matter

Any article that is otherwise acceptable and not prohibited by the country of destination, subject to applicable weight and size limits, may also be mailed at the letter-post rate, either airmail or economy.

242 Postage

242.1 Rates

See Individual Country Listings for airmail and economy rates.

242.2 Payment of Postage

Mailers of letter-post items may pay postage with postage stamps, postage meter stamps, postage validation imprinter (PVI) label, and by permit imprint.

243 Weight and Size Limits

243.1 Weight Limit

The weight limit is 4 pounds.

243.2 Size Limits

243.21 Envelopes and Packages

a. Minimum length and height: 5½ x 3½ inches.

b. Minimum depth (thickness): .007 inch.

c. Maximum length: 24 inches.

d. Maximum length, height, depth (thickness) combined: 36 inches.

243.22 Rolls

a. Minimum length: 4 inches.

b. Minimum length plus twice the diameter combined: 6¾ inches.

c. Maximum length: 36 inches.

d. Maximum length plus twice the diameter combined: 42 inches.

243.23 Cards

Unenclosed cards exceeding the size limits for post cards are admissible at the letter-post rate if they do not exceed 4¾ x 9¼ inches.

243.24 Nonstandard Surcharge

A surcharge of $0.11 per article will be assessed on all outbound air and economy letter-post items weighing 1 ounce or less if:

a. Its length exceeds 11½ inches.

b. Its height exceeds 6⅛ inches.

c. Its thickness exceeds ¼ inch.

d. Its length divided by its height results in an aspect ratio that is less than 1.3 or more than 2.5.

244 Preparation Requirements

244.1 Addressing

See 122.

244.2 Marking

a. Whenever items, because of their size and manner of preparation, may be mistaken for items of another class, the sender should add the word ''LETTER'' or ''LETTRE'' on the address side.

b. The sender should mark ''AIRMAIL/PAR AVION'' or affix Label 19–A, Par Avion Air Mail, or Label 19–B, Air Mail Par Avion, on front and back of items paid at the airmail letter-post rate.

244.3 Sealing

Unregistered letter-post items may be sealed at the sender's option. Registered items must be sealed. (See 334.4 for sealing requirements for registered mail.)

244.4 Packaging

Items prepaid at the letter-post rate must be placed in envelopes or prepared in package form.

244.5 Customs Forms Required

244.51 Dutiable Merchandise.

a. Any merchandise sent to another country may be subject to duty under the customs regulations of that country. The Postal Service does not maintain or provide information concerning the assessment of customs duty.

b. Letter-post items may contain dutiable merchandise unless the country of destination prohibits dutiable merchandise in letters. (See Individual Country Listings.)

c. When mailing articles that may be dutiable, sender must comply with 123.61 and with special instructions under ''Customs Forms Required'' and ''Observations'' in Individual Country Listings.

244.52 Nondutiable Merchandise

Nondutiable merchandise may be mailed (at the sender's risk) to countries that do not accept dutiable merchandise. The Postal Service assumes no responsibility for the treatment such items may receive in the country of destination.

Note: Because PS Form 2976, described in 123.61, generally denotes dutiable contents, it should be omitted from letter-post mail when the sender knows the contents are not dutiable, unless the item weighs 16 ounces or more.

250 Postcards and Aerogrammes

251 Description

251.1 Postal Cards/Postcards

251.11 Definition

Postal cards and postcards consist of single cards sent without a wrapper or envelope. Folded (double) cards must be mailed in envelopes at the letter-post rate of postage.

251.12 Reply-Paid Cards

Reply-paid cards are not accepted in international mail, except as provided in 132.2.

251.13 Specifications

Postcards must be made of cardboard or paper that meets the material and color specifications in 142.

251.14 Privately Manufactured Postcards

Privately manufactured postcards, except picture postcards, must bear the heading Postcard.

251.15 Permitted Attachments

The following may be glued on the left half of the address side of a card, or on the side opposite the address side, if they are made of paper or other thin material and adhere completely to the card:

a. Clippings of any kind.

b. Illustrations or photographs.

c. Labels other than address labels.

d. Stamps of any kind, except stamps likely to be confused with postage stamps, must not be placed on the address side of the card.

e. Address labels or address tabs that may be glued to the address side of the card.

251.16 Nonpermitted Attachments

The following must not be attached to cards:

a. Cloth, embroidery, or spangles.

b. Samples of merchandise.

251.2 Aerogrammes

251.21 Definition

Aerogrammes are letter sheets that can be folded into the form of an envelope and sealed. Tape or stickers must not be used to seal aerogrammes.

251.22 Postage

Aerogrammes (bearing imprinted postage) are sold at all post offices. Approved aerogrammes (without imprinted postage) obtained from private firms must have aerogramme-rate postage affixed. However, privately printed aerogrammes sent to Canada and Mexico may bear the appropriate airmail letter-post postage rate.

251.23 Available Service

Aerogramme service is available to all countries. Registry is available for aerogrammes. Recorded delivery service is available for aerogrammes if that service is available to the country of destination. See Individual Country Listings.

251.24 Enclosures

Enclosures are not permitted in aerogrammes. Aerogrammes that contain enclosures are treated as airmail letters and are subject to air letter postage rates. Aerogrammes with enclosures on which postage has not been paid at airmail letter rates must be returned to the sender for the deficiency or treated in accordance with 423.

251.3 Aerogrammes of Private Manufacture

251.31 Authorization

Individuals or firms may be authorized by the Postal Service to manufacture aerogrammes, without imprinted postage, for their own use or for sale to the public.

251.32 Approval

Before engaging in production, the applicant must apply for an aerogramme permit, submit three printed samples of the proposed aerogramme, and obtain authorization from: Manager Pricing Costing and Classification, International Bussiness, US Postal Service, 475 L'Enfant Plz SW 370 IBU, Washington, DC 20260–6500.

A sample format may be obtained from that office.

251.33 Specifications for Submitted Samples

The samples submitted for approval and the final printing of the aerogrammes must be on 18-pound paper (500 sheets, 17 x 22 inches) of light blue color as well as the texture equivalent to the regular three-flap aerogramme issued by the U.S. Postal Service. No artificial slippery finish, such as a silicon plastic, is permitted. The sheets, when folded, must measure 7¼ x 3⁹⁄₁₆ inches and have three sealing flaps. Samples submitted for approval need not have the flaps gummed, but the areas to be gummed must be identified. The sheets must:

a. Bear the printed endorsements that appear on the address and reverse sides of the aerogramme issued by the Postal Service.

b. Contain the printed return address of the applicant, or lines on which the return address may be written if the sheets are to be reproduced for sale to the public.

c. Bear the words ''AUTHORIZED FOR MAILING AS AN AEROGRAMME—P.S. PERMIT NO. * * *'' (the number to be filled in when issued). These words must be printed in small, clear type and appear on the lower edge of the address side (when the sheet is folded for mailing). The permit number will be issued at the time the aerogramme is approved.

252 Postage Rates

Postal Cards/Postcards

Canada $0.50
Mexico $0.50
All other countries $0.70

Aerogrammes

All countries $0.70

253 Weight and Size Limits

253.1 Weight Limits

Postcards weigh approximately the same as postal cards. See 142.

253.2 Size Limits

253.21 Postcards

a. Minimum: 3½ x 5½ inches.
b. Maximum: 4¼ x 6 inches.

Note: See 243.23 for larger cards.

253.22 Aerogrammes

The size limit for an aerogramme is 7¼ x 3⁹⁄₁₆ inches.

254 Preparation Requirements

254.1 Addressing

See 122.

254.2 Marking—Postal Cards/Postcards

254.21 Airmail

The sender should mark postcards ''Par Avion'' or affix Label 19–A, Par Avion Air Mail, or Label 19–B, Air Mail Par Avion, on the left side on the front.

254.22 Right Half of Postcard

The right half of the address side of a card must be reserved for the recipient's address and postal notations or labels.

254.23 Left Half and Reverse Side

The sender may use the left half of the address side of the card and the reverse side for a message or permissible attachments. The sender must use the upper-left half of the address side for his or her return address. Unless they bear the name and address of the sender, undeliverable cards are disposed of in the country of destination.

254.3 Sealing Aerogrammes

Tape or stickers must not be used to seal aerogrammes.

260 Direct Sacks of Printed Matter to One Addressee (M-Bags)

261 General Description

261.1 Definition

Direct sacks of printed matter to a single foreign addressee, which are also known as M-bags, are subject to the following conditions of mailing:

Minimum weight: 11 pounds. (**Note:** M-bags weighing less than 11 pounds may be admitted, provided that the sender pays the applicable 11-pound postage rate.)

Maximum weight: 66 pounds (including the tare weight of the sack).

Availability: All destinations that are referenced in the Individual Country Listings.

Identification: PS Tag 158, M-Bag Addressee Tag, must be completed and attached to the neck of the sack.

Postage: The applicable airmail, economy (formerly surface), or International Surface Air Lift (ISAL) postage must be affixed to PS Tag 158.

Special services: Certificate of mailing and recorded delivery are available. Return receipts and restricted delivery are available in conjunction with recorded delivery service. Registry and insurance are not available.

261.2 Allowable Contents

261.21 Printed Matter

Printed matter is admissible in M-bags. Printed matter is defined as paper on which words, letters, characters, figures, or images, or any combination thereof, not having the character of a bill or statement of account or of actual or personal correspondence, have been reproduced by any process other than handwriting or typewriting. Articles that meet the printed matter definition include newspapers, magazines, journals, books, sheet music, catalogs, directories, commercial advertising, and promotional matter.

261.22 Merchandise

Articles of merchandise may be enclosed in M-bags under the following conditions:

a. The merchandise items being sent are limited to disks, tapes, and cassettes; commercial samples shipped by manufacturers and distributors; or other non-dutiable commercial articles or informational materials that are not subject to resale.

b. The merchandise items relate to the printed matter (see 261.21) with which they are being mailed.

c. The merchandise items are affixed to or are otherwise combined with the accompanying printed matter.

d. The weight of each mailpiece or package, which contains merchandise in combination with printed matter, may not exceed 4 pounds.

e. The M-bag must be accompanied by a fully completed PS Form 2976, Customs—CN 22 (Old C1) and Sender's Declaration.

262 Postage

262.1 Rates

See the Individual Country Listings for airmail and economy M-bag rates, and 293.71 for International Surface Air Lift (ISAL) M-bag rates.

262.2 Payment of Postage

262.21 Stamps

Postage is calculated on the weight of the sack's contents. It is payable by affixing postage stamps, meter stamps, or a postage validation imprinter (PVI) label to PS Tag 158, M-Bag Addressee Tag.

262.22 By Indicia

If a publisher or registered news agent prepares a direct sack of publishers' periodicals (Periodicals Mail matter) for one addressee and desires to pay the postage from money on deposit with the postmaster, the postage must be computed at the per-copy rate based on the report on PS Form 3541, Periodicals One Issue or One Edition; PS Form 3541–M, Periodicals—All Issues in a Calendar Month; or PS Form 3540–S, Postage Statement—Supplement. In lieu of stamped or metered postage, the accompanying M-bag tag must bear the applicable Periodicals Mail indicia.

Note: The $0.25 per pound postage rate discount that is available to publishers or registered news agents who ''drop ship'' their mail at the New Jersey International and Bulk Mail Center (NJI&BMC) does not apply to M-bags.

263 Weight and Size Limits

263.1 Weight Limits

The minimum weight limit is 11 pounds and the maximum weight limit is 66 pounds, including the tare weight of the sack.

Note: M-bags weighing less than 11 pounds may be admitted, provided that the sender pays the applicable 11-pound postage rate.

263.2 Size Limits

There are no defined size limits so long as articles being sent can be enclosed in the mailbag.

264 Preparation Requirements

264.1 Marking

Printed matter, or printed matter in combination with merchandise items, must be placed into one or more individual packages bearing the name and address of the sender and addressee. Each package must be marked ''POSTAGE PAID—M-BAG.''

264.2 Sacking and Labeling

264.21 Equipment

The sacks and mailing tags (*i.e.,* PS Tag 158) needed for M-bag entry can be obtained from the local post offices. Airmail pouches, if available, will be furnished to customers who intend to utilize that type of M-bag service.

264.22 Tagging

PS Tag 158, M-Bag Addressee Tag, must be completed and attached to the neck of the sack. It must bear the requisite amount of stamped or metered postage or the sender's authorized permit imprint or indicia (see 262.2).

264.23 Multiple Sacks to One Addressee

If multiple sacks are sent to the same foreign addressee, PS Tag 158 must be marked with an identifiable fraction such as 1/5, 2/5, 3/5, etc.

264.24 Country Destination Name

The post office must label the sack with the name of the country of destination in large letters and the name of the U.S. dispatching exchange office in small letters (for example, ''Great Britain via New York''), and send it to that exchange office for dispatch to destination.

264.3 Customs Forms Required

M-bags containing merchandise items (see 261.22) or printed matter that is known to be dutiable in the country of destination must be accompanied by a fully completed PS Form 2976, Customs—CN 22 (Old C1) and Sender's Declaration.

270 Matter for the Blind

271 Description

Matter for the blind in international mail is limited to:

a. Books, periodicals, and other matter (including unsealed letters) impressed in Braille or other special type for the use of the blind.

b. Plates for embossing literature for the blind.

c. Disks, tapes, or wires bearing voice recordings and special paper intended solely for the use of the blind, provided they are sent by or addressed to an officially recognized institution for the blind.

d. Sound recordings or tapes that are mailed by a blind person.

e. Those items listed in DMM E040.2.0.

272 Postage Rates

Surface: Free.

Air: No separate airmail rates are provided for matter for the blind. If airmail service is desired, use airmail letter-post, air parcel post, or other category that meets service request. These items are subject to the weight, size, and preparation requirements of the category of mail selected.

273 Weight and Size Limits

273.1 Weight Limit

The weight limit is 15 pounds.

273.2 Size Limits

273.21 Envelopes and Packages

a. Minimum length and height: 5½ x 3½ inches.

b. Minimum depth (thickness): .007 inch.

c. Maximum length: 24 inches.

d. Maximum length, height, depth (thickness) combined: 36 inches.

273.22 Rolls

a. Minimum length: 4 inches.

b. Minimum length plus twice the diameter combined: 6¾ inches.

c. Maximum length: 36 inches.

d. Maximum length plus twice the diameter combined: 42 inches.

274 Preparation Requirements

274.1 Addressing

See 122.

274.2 Marking

274.21 Matter for the Blind Sent as Surface Mail

For surface mail accepted as matter for the blind, the word ''FREE'' must be placed in the upper-right corner, immediately above the words ''MATTER FOR THE BLIND.''

274.22 Name of Officially Recognized Institution

The officially recognized institution for the blind must appear in the address or the return address for the following items:

a. Disks, tapes, or wires bearing voice recordings.

b. Special paper intended solely for the use of the blind.

274.3 Sealing

Matter for the blind must not be sealed, even if registered.

274.4 Packaging

274.41 Subject to Postal Inspection

Matter for the blind is subject to postal inspection (see ASM 274), and must be prepared in such a way that the contents are protected but inspection of the contents is not hindered.

274.42 Types of Containers

The items must be placed in wrappers, in rolls, between cardboard, or in bags, boxes, unsealed envelopes, or containers. Dangerous fasteners may not be used. The articles may also be tied with string or twine in a manner that will permit them to be easily untied.

280 Parcel Post

281 General

Parcel post resembles domestic zone-rated Standard Mail (B) mail. Merchandise is permitted, but written communications having the nature of current and personal correspondence are not permitted.

Note: Parcel post is the only class of mail that may be insured (see 322).

282 Postage

282.1 Rates

See Individual Country Listings.

282.2 Mailing Locations

Parcels should be presented for mailing at a post office window.

282.3 Pickup Service

Scheduled pickup service is available for an added charge of $10.25 for each pickup stop, regardless of the number of pieces picked up. Only one pickup fee will be charged if domestic Express Mail, Global Express Mail, domestic Priority Mail, Global Priority Mail, and/or domestic Parcel Post is also picked up at the same time. No pickup fee will be charged when international parcel post is picked up during a delivery stop or during a scheduled stop made to collect other mail not subject to a pickup fee. Pickup service is provided in accordance with DMM D010.

283 Weight and Size Limits

283.1 Weight Limits

See Individual Country Listings.

283.2 Size Limits

283.21 Rectangular Parcels

a. Minimum length and width: 5½ x 3½ inches.

b. Maximum length: 42 inches.

c. Maximum length and girth combined: 79 inches.

283.22 Circular Parcels

Maximum girth (measured along diameter): 64 inches.

283.23 Exceptional Size Limits

Rectangular-shaped parcels with dimensions that exceed the standard 42-inch (maximum length) and 79-inch (maximum length and girth combined) size limits can be sent to Belgium, Canada, Germany, Great Britain, Hong Kong, Ireland, Japan, Liechtenstein, Macao, Sweden, and Switzerland. See the relevant Individual Country Listings for the exceptional size limits that apply to parcels addressed to each of those destination countries.

284 Preparation Requirements

284.1 Addressing

See 122. Name and address of sender and addressee should also be recorded on a separate slip enclosed in the parcel.

284.2 Marking

For air parcels, the accepting clerk must place Label 19–A or Label 19–B on the address side, below and to the left of the name of the country of destination. To preclude an airmail parcel from being handled as surface mail, accepting clerks may also put the written endorsement or Label 19–A or Label 19–B on the back lower-left of the parcel.

284.3 Sealing

284.31 Requirements

All international parcels must be sealed.

284.32 Sealing Materials

Senders must seal their own parcels. Wax, gummed-paper tape, nails, screws, wire, metal bands, or other materials may be used to seal parcels. The seal must be sufficient to allow detection of tampering.

284.4 Packaging

284.41 Packaging Requirements

Every parcel must be securely and substantially packed. In packing, the sender must consider the nature of the contents, the climate, the length of the journey, and the numerous handlings involved in the conveyance of international mail.

284.42 Types of Containers

Ordinary paperboard containers are not acceptable. Parcels must be packed in one of the following:

a. Canvas or similar material.

b. Double-faced corrugated or solid (minimum 275-pound test) fiber boxes or cases.

c. Strong wooden boxes made of lumber at least ½-inch thick or plywood of at least three plies.

284.43 Use of Wrapping Paper

Heavy wrapping paper or waterproof paper is permitted only as the outside covering of a carton.

284.44 Boxes With Screwed or Nailed Lids

If otherwise acceptable, boxes with screwed- or nailed-on lids and bags closed by sewing may be used. Heavy objects, such as cans of food, must be surrounded with other contents or packing material in order to prevent their shifting within the parcel. For illustrations or recommended packing procedures, see DMM C010.

284.45 Customs Forms Required

All parcel post packages must bear PS Form 2976–A.

284.46 Nonpostal Documentation

Forms required by nonpostal export regulations are described in chapter 5.

290 Commercial Services

291 [Reserved]

292 International Priority Airmail Service

292.1 Description

292.11 General

International Priority Airmail (IPA) service is as fast as or faster than regular international airmail service. It is available to bulk mailers of all letter-post items that are prepared by the sender in accordance with the requirements of this subchapter. Separate rates are provided for presorted mail and nonpresorted mail with drop shipment and volume discounts available.

292.12 Qualifying Mail

Any item of the letter-post classification, as defined in 141.5 and 141.6, qualifies, including aerogrammes and post cards. Items do not have to be of the same size and weight to qualify.

292.13 Minimum Quantity Requirements

292.131 Worldwide Nonpresort Mail

The mailer must have a minimum of 11 pounds of mail in the total mailing. The minimum does not apply to each country destination.

292.132 Presort Mail

The mailer must have a minimum of 11 pounds of presorted mail to a single rate group, including Canada, to qualify for the presort rate for that rate group.

Note: Mail that cannot be made up in direct country packages (292.452a), in direct country sacks (292.461), or in trays (292.465a) does not qualify for the presort rates and is subject to the worldwide nonpresort rates.

292.14 Dutiable Items

Dutiable items may be sent in accordance with the applicable rules in this subchapter for those classes of mail. Parcel post (CP) items, either ordinary or insured, may not be mailed as International Priority Airmail.

292.15 Deposit

292.151 Full Service

Mailings may be deposited and accepted at all post offices where bulk mail is accepted and the mailer holds an advance deposit account or postage meter license.

292.152 Drop Shipment

To qualify for the drop shipment rates, the mailer must tender the mail to one of the locations in 292.153. The mailer must pay postage at the drop shipment location either through an advance deposit account or postage meter license at the serving post office. As an alternative, mailers who are participating in a PVDS program (see DMM P750) may have the mail verified, accepted, and paid for at the mailer's plant or at the origin post office serving the mailer's plant if authorized under DMM P750.2.2. Plant-verified drop shipment mail must be transported by the mailer to the drop shipment location and the mail accompanied by PS Form 8125, Drop Shipment Clearance Document.

292.153 Drop Shipment Locations

Drop shipment rates are available at the following offices:

New York: John F. Kennedy Airport Mail Ctr, US Postal Service, John F. Kennedy International Airport Bldg 250, Jamaica, NY 11430–9998.

Florida: Miami International Service Ctr*, US Postal Service, 11690 NW 25th St, Miami, FL 33172–1702; Miami Processing and Distribution Ctr, US Postal Service, 2200 NW 72nd Ave, Miami FL 33152–9997.

Texas: Dallas International Service Ctr, US Postal Service, 15050 Trinity Blvd, Fort Worth, TX 76155–3203.

Illinois: Chicago O'Hare International Annex, US Postal Service, 514 Express Center Dr, Chicago IL 60688–9998.

California: San Francisco ISC, US Postal Service, 2650 Bayshore Blvd, Daly City, CA 94013–1631; Worldway Airport Mail Ctr, US Postal Service, 21750 Arnold Center Rd, Carson CA 90810–9998.

*Only plant-verified mail is transported to these facilities by the mailer.

292.16 Special Services Not Available

Items sent in this service may not be registered.

292.2 Postage

292.21 Rates

292.211 General

There are two rate options for International Priority Airmail service: A presort rate option that has eight rate groups and a worldwide nonpresort rate. For both options, there are full service rates for mail deposited at offices other than the drop shipment offices listed in 292.153, and drop shipment rates for mail deposited at one of the drop shipment offices. The per-piece rates and per-pound rates are shown in Exhibit 292.11. The per-piece rate applies to each piece regardless of its weight. The per-pound rate applies to the net weight (gross weight minus tare weight of sack) of the mail for the specific rate group. Fractions of a pound are rounded to the next whole pound for postage calculation.

EXHIBIT 292.211—INTERNATIONAL PRIORITY AIRMAIL RATES

Rate group	Per piece	Drop shipment per pound	Full service per pound
1 (Canada)	$0.25	$2.60	$3.60
2 (Mexico)	0.12	4.60	5.60
3	0.20	4.25	5.25
4	0.20	5.50	6.50
5	0.12	4.60	5.60
6	0.12	4.75	5.75
7	0.12	6.25	7.25
8	0.12	7.25	8.25
Worldwide	0.20	7.00	8.00

292.212 Volume Discount

Mailers who spend $2 million or more on IPA and ISAL in the preceding postal fiscal year may receive discounts as follows:

a. $2 million to $5 million: 5 percent discount.

b. Over $5 million to $10 million: 10 percent discount.

c. Over $10 million: 15 percent discount.

Mailers entitled to these discounts must place the full per-piece rate on each piece of mail if payment is by postage meter or mailer-precanceled stamps. The discount is calculated on the postage statement.

292.213 Qualifying for Volume Discounts

To qualify for volume discounts, mailers must apply in writing to: Manager, Marketing and Sales, International Business, US Postal Service, 475 L'Enfant Plz SW 370 IBU, Washington, DC 20260–6500.

The manager evaluates all requests and informs the mailer and the post office(s) of mailing whether discounts are approved and the level of discount. Mailers must supply the following information:

a. Postal fiscal year for the qualifying mail.

b. Permit number(s) and post office(s) where the permits are held.

c. Total revenue for the postal fiscal year.

d. Post office(s) where the discount is to be claimed.

The combined IPA and ISAL revenue is counted toward the discounts. The Postal Service will count as revenue to qualify for the volume discounts only postage paid by the permit holder. If a permit holder has more than one account, or accounts in several cities, then these revenues may be combined to qualify for discounts. Agents who prepare mail for the owner of the mail and mail paid by the owner's permit may not be included in the revenue to qualify for the discounts. Customers may be required to substantiate their request by providing copies of all postage statements for the appropriate postal fiscal year. All decisions of the Manager, Mail Order are final.

292.214 Availability

IPA service is available to all foreign countries, as listed in Exhibit 292.452, which shows the rate group assigned to each country.

292.215 Presort Rates

To qualify for the presort rates (see Exhibit 292.211), a mailing must consist of a minimum of 11 pounds to a specific rate group. This minimum applies to each rate group and not to the entire mailing. Within a rate group, all mail addressed to an individual country must be sorted into direct country packages of 10 or more pieces (or 1 pound or more of mail) and/or sacked in direct country sacks of 11 pounds or more. Mail that cannot be made up into direct country packages or direct country sacks must be sent at the worldwide nonpresort rates.

Note: There are separate preparation requirements for mail to Canada. See 292.465.

292.216 Separation by Rate Group

The mailer must specify the rate group on the back of PS Tag 115, International Priority Airmail, with 1 (Canada), 2 (Mexico), 3, 4, 5, 6, 7, 8, or WW (Worldwide), and must physically separate the sacks by rate group at the time of mailing.

292.217 Computation of Postage

Postage is computed on PS Form 3652, Postage Statement—International Priority Airmail. Postage at the worldwide nonpresort rate is calculated by multiplying the number of pieces in the mailing by the applicable per-piece rate, multiplying the net weight (in whole pounds) of the entire mailing by the applicable per-pound rate, and then adding the two totals together. Postage at the presorted rates is calculated by multiplying the number of pieces in the mailing destined for countries in a specific rate group by the appropriate per-piece rate, multiplying the net weight (in whole pounds) of those pieces by the corresponding per-pound rate, and then adding the two totals together. Volume discounts are calculated on the postage statement.

292.22 Postage Payment Methods
292.221 General

a. Postage Meter or Permit Imprint. Postage must be paid by postage meter, permit imprint, or mailer-precanceled stamps (see DMM P023.3.0), or a combination. Postage charges are computed on PS Form 3652.

b. Piece Rate Portion. The applicable per-piece postage must be affixed to each piece by meter unless postage is paid by permit imprint or mailer-precanceled stamps (see 292.223).

c. Pound Rate Portion. Postage for the pound rate portion must be paid either by meter stamp(s) attached to the postage statement or from the mailer's authorized permit imprint advance deposit account.

292.222 Postage Meter

a. Postage Endorsement. When postage is paid by meter or mailer-precanceled stamps, each piece must be legibly endorsed with the words ''INTERNATIONAL PRIORITY AIRMAIL.''

b. Specifications for Endorsement. The endorsement required in 292.222a must appear on the address side of each piece and must be applied by a printing press, hand stamp, or other similar printing device. It must be printed above the name of the addressee and to the left or below the postage, or it may be printed adjacent to the meter stamp in either the postal inscription slug area or ad plate area. If the postal endorsement appears in the ad plate area, no other information may be printed in the ad plate. The endorsement may not be typewritten or hand-drawn. The endorsement is not considered adequate if it is included as part of a decorative design or advertisement.

c. Unmarked Pieces. Unmarked pieces lacking the postage endorsement required by 292.222a are subject to the airmail letter-post single piece rates.

d. Drop Shipment of Metered Mail. Mailers who want to enter metered IPA mail at a post office other than where the meter is licensed must obtain a drop shipment authorization. To obtain an authorization, the mailer must submit a written request to the postmaster at the office where the mail will be entered (see DMM D072).

292.223 Permit Imprint

Mailers may use a permit imprint for mailings that contain identical weight pieces. Any of the permit imprints shown in Exhibit 152.3 are acceptable. The postage charges are computed on PS Form 3652 and deducted from the advance deposit account. Permit imprints must not denote Priority Mail, bulk mail, nonprofit mail, or other domestic or special rate mail. Mailers may use permit imprint with nonidentical weight pieces only if authorized to use postage mailing systems under DMM P710, P720, or P730.

292.3 Weight and Size Limits

See 243 for the weight and size limits for letter-post items sent in this service. Items may not weigh more than 4 pounds.

292.4 Preparation Requirements for Individual Items

292.41 Addressing

International Priority Airmail is subject to the addressing requirements contained in 122.

a. Exception: International Priority Airmail items destined for Canada must have the applicable alphanumeric postcode included in the delivery address. See 122.1k for the address formatting requirements that generally apply to mailpieces sent to Canada.

b. Exception: International Priority Airmail in direct country sacks (see 292.461) is not subject to the interline addressing requirement that is specified in 122.1d. At the sender's risk, the English translation of the destination post office or city name may be omitted from printed addresses that are in Russian, Greek, Arabic, Hebrew, Cyrillic, Japanese, or Chinese characters. An English translation of the country name (*e.g.,* ''Japan'') is still required on the individual mailpieces.

292.42 Marking 292.421

Airmail

The sender should mark ''PAR AVION'' or ''AIR MAIL'' on the address side of each piece. Use of bordered airmail envelopes is optional and may be used for items sent in this service if the envelope contains the ''AIR MAIL'' endorsement.

292.422 Packages

Items that might be mistaken for another class of mail because of their size, weight, or appearance should be marked ''LETTER'' on the address side.

292.43 Sealing

Any item sent in this service may be sealed at the option of the sender.

292.44 Packaging

All items must be placed in envelopes or prepared in package form.

292.45 Sortation Requirements for IPA

292.451 Worldwide Nonpresorted Mail

a. Working Packages. IPA mail paid at the nonpresorted rate must be made up into working packages. Letters and flats must be packaged separately, although nonidentical pieces may be commingled within each of these categories. Pieces that cannot be packaged because of their physical characteristics must be placed loose in the sack.

b. Facing of Nonpresorted Mail Within Package. All pieces in the working packages must be faced the same way.

292.452 Presorted Mail

a. Direct Country Packages. When there are 10 or more pieces or 1 pound or more of mail for the same country (except Great Britain), it must be made up into a country package. Great Britain requires a finer sortation. At the mailer's option, a finer breakdown by city or postal code may be made based on sortation information provided by the postal administration of the destination country.

b. Country Package Label.

(1) The label (facing slip) for country packages that contain 10 or more pieces to a specific country (except for Great Britain and Mexico) must be completed as follows:

Line 1: Foreign Exchange Office.
Line 2: Country of Destination.
Line 3: Mailer and Mailer Location.

Example:

1150 VIENNA FLUG AUSTRIA RBA COMPANY WASHINGTON DC

(2) See Exhibit 292.452 for Direct Country Package Label and PS Tag 178, CN 35 Par Avion, for information.

c. Country Packages to Great Britain. When there are 10 or more pieces or 1 pound or more per separation, International Priority Airmail to Great Britain must be sorted into packages in the following manner:

Separation	Exchange office (Line 1 bundle label)
London City	London Town.
Scotland	Glasgow Fwd.
Northern Ireland	Belfast Fwd.
All Other Great Britain	Great Britain, Great Britain.

Example:

LONDON TOWN GREAT BRITAIN MAILER AND MAILER LOCATION

d. Facing of Pieces Within Country Package. All pieces in the country package must be faced in the same direction and a facing slip identifying the contents of the package must be placed on the address side of the top piece of each package in such a manner that it will not become separated from the package.

Note: The pressure-sensitive labels and optional endorsement lines used domestically for presort mail are prohibited for International Priority Airmail.

Exhibit 292.452 Foreign Exchange Office and Country Rate Groups

[Exhibit not included, except rate groups. Formerly Exhibit 284.522.]

Country	IPA
Afghanistan	8
Albania	5
Algeria	8
Andorra	3
Angola	8
Anguilla	6
Antigua and Barbuda	6
Argentina	6
Armenia	8
Aruba	6
Ascension	5
Australia	4
Austria	3
Azerbaijan	8
Bahamas	6
Bahrain	8
Bangladesh	8
Barbados	6
Belarus	5
Belgium	3
Belize	6
Benin	8
Bermuda	6
Bhutan	8
Bolivia	6
Bosnia-Herzegovina	5
Botswana	8
Brazil	6
British Virgin Islands	6
Brunei Darussalam	7
Bulgaria	5
Burkina Faso	8
Burma (Myanmar)	8
Burundi	8
Cambodia	7
Cameroon	8
Canada	1
Cape Verde	8
Cayman	6
Central African Republic	8
Chad	8
Chile	6
China	7
Colombia	6
Comoros Islands	8
Congo (Brazzaville), Republic of the	8
Congo (Kinshasa), Democratic Republic of the	8
Costa Rica	6
Cote d'Ivoire (Ivory Coast)	8
Croatia	5
Cuba	6
Cyprus	8
Czech Republic	5
Denmark	3
Djibouti	8
Dominica	6
Dominican Republic	6
Ecuador	6
Egypt	8
El Salvador	6
Equatorial Guinea	8
Eritrea	8
Estonia	5
Ethiopia	8
Falkland Islands	6
Faroe Islands	5
Fiji	7
Finland	3
France (includes Corsica & Monaco)	3
French Guiana	6
French Polynesia (includes Tahiti)	7
Gabon	8
Gambia	8
Georgia, Republic of	8
Germany	3
Ghana	8
Gibraltar	3
Great Britain and Northern Ireland	3
Greece	3
Greenland	3
Grenada	6
Guadeloupe	6
Guatemala	6
Guinea	8
Guinea-Bissau	8
Guyana	6
Haiti	6
Honduras	6
Hong Kong	7
Hungary	5
Iceland	3
India	8
Indonesia (includes East Timor)	7
Iran	8
Iraq	8
Ireland	3
Israel	3
Italy	3
Jamaica	6
Japan	4
Jordan	8
Kazakhstan	8
Kenya	8
Kiribati	7
Korea, Dem. People's Rep. of (North)	7
Korea, Republic of (South)	7
Kuwait	8
Kyrgyzstan	5
Laos	7
Latvia	5
Lebanon	8
Lesotho	8
Liberia	8

Country	IPA
Libya	8
Liechtenstein	3
Lithuania	5
Luxembourg	3
Macao	5
Macedonia, Republic of	5
Madagascar	8
Malawi	8
Malaysia	7
Maldives	8
Mali	8
Malta	8
Martinique	6
Mauritania	8
Mauritius	8
Mexico	2
Moldova	8
Mongolia	7
Montserrat	6
Morocco	8
Mozambique	8
Namibia	8
Nauru	7
Nepal	7
Netherlands	3
Netherlands Antilles	6
New Caledonia	7
New Zealand	4
Nicaragua	6
Niger	8
Nigeria	8
Norway	3
Oman	8
Pakistan	8
Panama	6
Papua New Guinea	7
Paraguay	6
Peru	6
Philippines	7
Pitcairn Island	7
Poland	5
Portugal (includes Azores & Madeira Islands)	3
Qatar	8
Reunion	8
Romania	5
Russia	5
Rwanda	8
Saint Christopher (St. Kitts) and Nevis	6
Saint Helena	8
Saint Lucia	6
Saint Pierre & Miquelon	6
Saint Vincent and the Grenadines	6
San Marino	3
Sao Tome and Principe	5
Saudi Arabia	8
Senegal	8
Serbia-Montenegro (Yugoslavia)	5
Seychelles	8
Sierra Leone	8
Singapore	7
Slovak Republic (Slovakia)	5
Slovenia	5
Solomon Islands	7
Somalia	8
South Africa	8
Spain (includes Canary Islands)	3
Sri Lanka	8
Sudan	8
Suriname	6
Swaziland	8
Sweden	3
Switzerland	3
Syria	8
Taiwan	7
Tajikistan	8
Tanzania	8
Thailand	7
Togo	8
Tonga	7
Trinidad and Tobago	6
Tristan da Cunha	8
Tunisia	8
Turkey	5
Turkmenistan	5
Turks and Caicos Islands	6
Tuvalu	7
Uganda	8
Ukraine	8
United Arab Emirates	8
Uruguay	6
Uzbekistan	8
Vanuatu	7
Vatican City	3
Venezuela	6
Vietnam	7
Wallis and Futuna Islands	7
Western Samoa	7
Yemen	8
Zambia	8
Zimbabwe	8

292.453 Physical Characteristics and Requirements for Packages

a. Thickness. Packages of letter-size mail should be no thicker than approximately a handful of mail (4 to 6 inches thick).

b. Securing Packages. Each package must be securely tied. Placing rubber bands around the length and then the girth is the preferred method of securing packages of letter-size mail. Plastic strapping placed around the length and then the girth is the preferred method of securing packages of flat-size mail.

c. Separation of Packages. Letter-size and flat-size mail must be packaged separately.

292.46 Sacking Requirements

292.461 Direct Country Sack (11 Pounds or More)

a. General. When there are 11 or more pounds of mail addressed to the same country (including Great Britain), the mail must be packaged and enclosed in blue international airmail sacks and labeled to the country with PS Tag 178, Airmail Bag Label LC (CN 35/AV 8) (white). All types of mail, including letter-size packages, flat-size packages, and loose items, can be commingled in the same sack for each destination and counted toward the 11-pound minimum.

b. Direct Country Sack Tags. Direct country sacks must be labeled with PS Tag 178. The tag is white and specially coded to route the mail to a specific country and airport of destination. The blocks on the tag for date, weight, and dispatch information must be completed by the Postal Service and may not be completed by the mailer. The mailer must complete the ''To'' block showing the destination country. PS Tag 115, International Priority Airmail, must also be affixed to the direct country sacks. PS Tag 115 is a Day-Glo pink tag that identifies the mail to ensure it receives priority handling. The mailer must designate on the back of PS Tag 115 the applicable rate group using 1 (Canada), 2 (Mexico), 3, 4, 5, 6, 7, 8, or WW (Worldwide).

292.462 Mixed Direct Country Package Sacks

a. General. The direct country packages containing 10 or more pieces or 1 pound or more of mail destined to a specific country that cannot be made up in direct country sacks must be enclosed in orange Priority Mail sacks unless other equipment is specified by the acceptance office.

b. Mixed Direct Country Sack Label. The sack label must be completed as follows. (See Exhibit 292.462 for list of U.S. International Exchange Offices.)

Line 1: Appropriate U.S. Exchange Office and Routing Code
Line 2: Contents—DRX
Line 3: Mailer and Mailer Location
Example:

```
AMC SEATTLE WA 980
INT'L PRIORITY AIRMAIL—DRX
ABC STORE SEATTLE WA
```

Exhibit 292.462 Labeling of IPA Mail to USPS Exchange Offices

[Exhibit not included. Formerly Exhibit 284.622.]

292.463 Worldwide Nonpresort Mail Sacks

a. General. The working packages of mixed country mail and loose items must be enclosed in orange Priority Mail sacks unless other equipment is specified by the acceptance office. Nonpresorted letter-size mail may be presented in trays if authorized by the acceptance office.

Note: Working packages of mixed country mail cannot be enclosed in mixed direct country package sacks.

b. Worldwide Nonpresort Mail Sack Label. The sack label must be completed as follows:

Line 1: Appropriate U.S. Exchange Office and Routing Code
Line 2: Contents—WKG
Line 3: Mailer and Mailer Location
Example:

```
ISC MIAMI FL 33112
INT'L PRIORITY AIRMAIL—WKG
ABC COMPANY MIAMI, FL
```

See Exhibit 292.462 for list of U.S. International Exchange Offices.

292.464 Tags and Weight Maximum for Sacks

a. PS Tag 115 and PS Tag 178. All IPA sacks (direct country, mixed direct country package sacks, and worldwide nonpresort mail sacks) must be labeled with PS Tag 115, International Priority Airmail. PS Tag 115 is a Day-Glo pink tag that identifies IPA mail to ensure that it receives priority treatment. PS Tag 178 (see 292.461) is a dispatching tag to be used only for direct country sacks. PS Tag 178 is white and specially coded to route the mail to a specific country and airport of destination. The Postal Service must complete the blocks on the tag for date, weight, and dispatch information. The mailer must complete only the ''To'' block showing the destination country. Postal tags and sacks are available from the post office.

b. Sack Weight Maximum. The maximum weight of the sack and contents must not exceed 66 pounds.

292.465 Preparation Requirements for Canada

To qualify for the presort rates for Canada, a mailer must have at least 11 pounds of mail for Canada. This includes letter-size, flat-size, and package-size items even though such items are prepared in separate equipment. If the mailing contains less than 11 pounds of mail for Canada, or if the mailer chooses to do so, mail for Canada is included in the worldwide nonpresort rate mail with mail for other countries. Worldwide nonpresort mail for Canada is prepared in accordance with 292.463. The preparation requirements of presorted mail to Canada follow.

a. Letter-Size Mail and Flat-Size Mail. Letter-size items are prepared in letter trays, either half-size or full-size, depending on volume. Flat-size items are prepared in flat trays. All items must be faced in the same direction, and all trays must be full enough to keep the mail from mixing during transportation. Do not prepare the content of the tray in packages. The mailer must label each tray to show the destination in Canada and the dispatching U.S. international exchange office in the following format:

Line 1: Canadian Destination and U.S. Exchange Office Code

Line 2: Contents

Line 3: Mailer and Mailer Location

Example:

```
TORONTO ON FWD 11430
IPA
ABC COMPANY NEW YORK NY
```

In addition, the mailer must complete PS Tag 115, International Priority Airmail. Write ''Canada'' on the reverse and tape the tag to the tray sleeve. All trays must be banded.

b. Packages. Items that cannot be prepared in trays because of their size or shape must be placed loose in blue airmail sacks. Use PS Tag 115, International Priority Airmail, and label to either Toronto or Vancouver, as appropriate. Attach a completed PS Tag 178. See 292.461b.

Exhibit 292.465 Canadian Labeling Information

[Exhibit not included. Formerly Exhibit 284.65.]

292.47 Customs Forms Requirements

See 123.

293 International Surface Air Lift (ISAL) Service

293.1 Definition

International Surface Air Lift (ISAL) is a bulk mailing system that provides fast, economical international delivery of letter-post items. The cost is lower than airmail and the service is much faster than surface mail. ISAL shipments are flown to the foreign destinations and entered into that country's surface or nonpriority mail system for delivery.

293.2 Qualifying Mail and Minimum Quantity Requirements

Letter-post mail as defined in 241 that meets all applicable mailing standards may be sent in this service. There is a minimum volume requirement of 50 pounds per mailing except for the Direct Shipment option, which requires a minimum 750 pounds to a single country destination. Mail is prepared as (1) direct country sacks when there are 11 pounds or more to a single country or required country separation; (2) mixed country package sacks when there are 10 or more pieces or at least 1 pound of mail to a single country, but less than 11 pounds; and (3) residual mail when there are fewer than 10 pieces or less than 1 pound of mail to a single country. Residual mail may not exceed 10 percent, by weight, of the mail presented in direct country sacks, M-bags, and mixed country package sacks. Qualifying residual mail is subject to the appropriate ISAL rate (Full Service, Direct Shipment, M-Bag, or Dropship ISC).

Note: A package is defined as 10 or more pieces of mail to the same country separation or 1 pound or more regardless of the number of pieces. Packages of letter-size pieces of mail should be no thicker than approximately a handful of mail (4 to 6 inches). Packages of flat-size mail may be thicker than 6 inches but must not weigh more than 11 pounds.

293.3 Service Options

293.31 Availability

ISAL service is available to the foreign countries listed in Exhibit 293.71 from all post offices where bulk mail is accepted and from the drop shipment ISCs listed in 293.32.

293.32 Drop Shipment ISAL International Service Centers

ISAL deposited at the following drop shipment ISAL ISCs qualify for the drop shipment ISC rates shown in 293.71:

New York: John F. Kennedy Airport Mail Ctr, U.S. Postal Service, John F. Kennedy International Airport Bldg 250, Jamaica, NY 11430–9998.

Florida: Miami International Service Ctr *, U.S. Postal Service, 11690 NW 25th St, Miami, FL 33172–1702; Miami Processing and Distribution Ctr, U.S. Postal Service, 2200 NW 72nd Ave, Miami, FL 33152–9997.

Texas: Dallas International Service Ctr, U.S. Postal Service, 15050 Trinity Blvd, Fort Worth, TX 76155–3203.

Illinois: Chicago O'Hare International Annex, U.S. Postal Service, 514 Express Center Dr, Chicago, IL 60688–9998.

California: San Francisco ISC, U.S. Postal Service, 2650 Bayshore Blvd, Daly City, CA 94013–1631; Worldway Airport Mail Ctr, U.S. Postal Service, 21750 Arnold Center Rd, Carson, CA 90810–9998.

* Only plant-verified mail is transported to these facilities by the mailer.

293.4 Special Services

The special services described in chapter 3 are not available for items sent by ISAL.

293.5 Customs Documentation

See 123 for the requirements for customs forms.

293.6 Permits

Mailers depositing mail at a drop shipment ISC must maintain an advance deposit account at that city if postage is paid by advance deposit account.

293.7 Postage

293.71 Rates

Rate Group	Per piece	Drop shipment per pound	Direct shipment per pound	Full service per pound	M-Bag drop shipment	M-Bag direct shipment	M-Bag full service
1 (Canada)	$0.25	$2.15	$2.65	$3.15	$1.40	$1.50	$1.50
2 (Mexico)	0.12	3.20	3.70	4.20	1.50	1.60	1.60
3	0.20	2.50	3.00	3.50	1.50	1.75	1.75
4	0.20	2.75	3.25	3.75	2.50	2.50	2.50
5	0.12	3.45	3.95	4.45	2.00	2.25	2.25
6	0.12	3.40	3.90	4.40	2.00	2.25	2.25
7	0.12	3.50	4.00	4.50	2.25	2.50	2.50
8	0.12	5.50	6.00	6.50	3.00	3.25	3.25

Exhibit 293.71 International Surface Air Lift Service Network Countries and Rates

[Exhibit not included, except rate groups. Formerly Exhibit 246.71.]

Country	ISAL rate group
Albania	5
Algeria	8
Angola	8
Argentina	6
Aruba	6
Australia	4
Austria	3
Bahrain	8
Bangladesh	8
Belgium	3
Belize	6
Benin	8
Bolivia	6
Brazil	6
Bulgaria	5
Burkina Faso	8
Cameroon	8
Canada	1
Central African Republic	8
Chile	6
China	7
Colombia	6
Congo (Kinshasa), Democratic Republic of the	8
Costa Rica	6
Cote d'Ivoire (Ivory Coast)	8
Cuba	6
Czech Republic	5
Denmark	3
Dominican Republic	6
Ecuador	6
Egypt	8
El Salvador	6
Fiji	7
Finland	3
France (includes Corsica & Monaco)	3
French Guiana	6
Gabon	8
Germany	3
Ghana	8
Great Britain and Northern Ireland	3
Greece	3
Guatemala	6
Guyana	6
Haiti	6
Honduras	6
Hong Kong	7
Hungary	5
Iceland	3
India	8
Indonesia (includes East Timor)	7
Iran	8
Ireland	3
Israel	3
Italy	3
Jamaica	6
Japan	4
Jordan	8
Kenya	8
Korea, Republic of (South)	7
Kuwait	8
Lebanon	8
Liechtenstein	3
Luxembourg	3
Madagascar	8
Malaysia	7
Mali	8
Mauritania	8
Mauritius	8
Mexico	2
Morocco	8
Mozambique	8
Netherlands	3
Netherlands Antilles	6
New Zealand	4
Nicaragua	6
Niger	8
Nigeria	8
Norway	3
Oman	8
Pakistan	8
Panama	6
Papua New Guinea	7
Paraguay	6
Peru	6
Philippines	7
Poland	5
Portugal (includes Azores & Madeira Islands)	3
Qatar	8
Reunion	8
Romania	5
Russia	5
San Marino	3
Saudi Arabia	8
Senegal	8
Singapore	7
South Africa	8
Spain (includes Canary Islands)	3
Sri Lanka	8
Sudan	8
Suriname	6
Sweden	3
Switzerland	3
Syria	8
Taiwan	7
Tanzania	8
Thailand	7
Togo	8
Trinidad and Tobago	6
Tunisia	8
Turkey	5
Uganda	8
United Arab Emirates	8
Uruguay	6
Venezuela	6
Yemen	8
Zambia	8
Zimbabwe	8

293.72 Full Service Rates

ISAL mailings presented at any post office that accepts bulk mail, other than a drop shipment ISC listed in 293.32, and not eligible for the direct shipment rate, are paid at the full-service rates. Postage for regular ISAL is paid on a per-piece and a per-pound basis. M-bags are subject to the M-bag pound rate only.

293.73 Direct Shipment Rates

Mailers are eligible for the direct shipment rates from the acceptance post office (except drop shipment ISCs) when the Postal Service is able to arrange direct transportation from the origin office to the destination country. To qualify, mailers must present a minimum of 750 pounds to each destination country. Mailers must contact the post office of mailing at least 14 days before the first desired mailing date. A postal employee must complete PS Form 3655, International Surface Airlift (ISAL) Direct Shipment Option Advisement and Confirmation of Transactions, and fax it to the distribution network office (DNO) to obtain a contract for transportation. If the DNO cannot arrange direct transportation, the direct shipment rate does not apply. The Postal Service may cancel direct shipment rates and service when direct transportation is no longer available.

293.74 Drop Shipment ISC Rates

ISAL mailings transported by the mailer to the drop shipment ISCs listed in 293.32 are eligible for the drop shipment ISC rate.

293.75 Volume Discount

293.751 General

Mailers who spend $2 million or more combined on ISAL and IPA in the preceding postal fiscal year may receive discounts off the rates shown in 293.71:

a. Over $2 million to $5 million: 5 percent discount.

b. Over $5 million to $10 million: 10 percent discount.

c. Over $10 million: 15 percent discount.

Mailers entitled to these discounts must place the full per-piece rate on each piece of mail if payment is by postage meter or mailer-precanceled stamps. The discount is calculated on the postage statement.

293.752 Qualifying for Volume Discounts

To qualify for volume discounts, mailers must apply in writing to: Manager Marketing and Sales, International Business, U.S. Postal Service, 475 L'Enfant Plz SW 370 IBU, Washington, DC 20260–6500.

The manager evaluates all requests and informs the mailer and the post office(s) of mailing whether discounts are approved and the level of discount. Mailers must supply the following information:

a. The postal fiscal year for the qualifying mail.

b. The permit number(s) and post office(s) where the permits are held.

c. The total revenue for the postal fiscal year.

d. The post office(s) where the discount is to be claimed.

The combined ISAL and IPA revenue is counted toward the discounts. The Postal Service will count as revenue to qualify for the volume discounts only postage paid by a permit holder. If a permit holder has more than one account, or accounts in several cities, then these revenues may be combined to qualify for discounts. Agents who prepare mail for the owner of the mail and mail paid by the owner's permit may not be included in the revenue to qualify for the discounts. Customers may be required to substantiate their request by providing copies of all mailing statements for the appropriate postal fiscal year. All decisions of the Manager, Mail Order are final.

293.76 Payment Methods

293.761 Postage Meter, Permit Imprint, or Mailer Precanceled Stamps

Postage must be paid by postage meter, permit imprint, or mailer-precanceled stamps. Postage is computed on PS Form 3650, Statement of Mailing—International Surface Air Lift. PS Form 3650 is required for all ISAL mailings.

293.762 Piece Rate

The applicable per-piece postage must be affixed to each piece (except M-bags) by meter or mailer-precanceled stamps, unless postage is paid by permit imprint. Mailers may use permit imprint only with identical weight pieces unless authorized under the postage mailing systems in DMM P710, P720, or P730. All of the permit imprints for printed matter shown in Exhibit 152.3 are acceptable.

293.763 Pound Rate

Postage for the pound rate portion must be paid either by meter stamp(s) attached to the finance copy of the postage statement or from the mailer's advance deposit account.

293.8 Weight and Size Limits

Any item sent by ISAL must conform to the weight and size limits for letter-post as described in 243.

293.9 Preparation Requirements
293.91 Addressing

International Surface Air Lift mail is subject to the addressing requirements contained in 122.

a. Exception: International Surface Air Lift items destined for Canada must have the applicable alphanumeric post code included in the delivery address. See 122.1k for the address formatting requirements that generally apply to mailpieces sent to Canada.

b. Exception: International Surface Air Lift mail in direct country sacks (see 293.942a) is not subject to the interline addressing requirement that is specified in 122.1d. At the sender's risk, the English translation of the destination post office or city name may be omitted from printed addresses that are in Russian, Greek, Arabic, Hebrew, Cyrillic, Japanese, or Chinese characters. An English translation of the country name (*e.g.,* ''Russia'') is still required on the individual mailpieces.

293.92 Marking

For publishers' periodicals (Periodicals Mail), the imprint authorized under 244.211c(2) or 244.211c(3) may be used. Individual items paid by meter postage or mailer-precanceled stamps must be endorsed ''International Surface Air Lift'' or ''ISAL.''

293.93 Sealing and Packaging

Any item sent in this service may be sealed at the option of the sender.

293.94 Makeup Requirements for ISAL

293.941 Packaging

The following guidelines apply:

a. General. All ISAL mail must be prepared in packages within sacks as appropriate. A package is defined as 10 or more pieces of mail to the same country or separation or 1 pound or more regardless of the number of pieces. Packages of letter-size mailpieces should be no thicker than approximately a handful of mail (4 to 6 inches). Packages of flat-size mail may be thicker than 6 inches but must not weigh more than 11 pounds. Packages and sacks must be prepared and labeled as described below. All mailpieces in a package must be faced in the same direction (*i.e.,* arranged so that the addresses read in the same direction, with an address visible on the top piece). Pieces that cannot be bundled because of their physical characteristics may be placed loose in the sack.

b. Thickness. Packages of letter-size mail should be no thicker than approximately a handful of mail (4 to 6 inches). Packages of flat-size mail may be thicker than 6 inches but must not weigh more than 11 pounds. Each package must be securely tied. Placing rubber bands around the length and then the girth is the preferred method of securing packages of letter-size mail. Plastic strapping placed around the length and then the girth is the preferred method of securing packages of flat-size mail.

c. Direct Country Packages. When there are 10 or more pieces or 1 pound or more to the same country, then such pieces must be prepared as a direct country package. If there is less than 11 pounds of mail to the same country, then the direct country package must be labeled with a facing slip showing the destination country or country separation. The facing slip must be placed on the address side of the top piece of each package in such a manner that it will not become separated from the package. The pressure-sensitive labels and optional endorsement lines used domestically for presort mail are prohibited for International Surface Air Lift mail.

d. Residual Packages. If there is not enough mail to prepare a direct country package (fewer than 10 pieces or less than 1 pound), the mail is considered residual mail. When there are fewer than 10 pieces to the same country, then such pieces should be combined in packages with other mail for countries within the same rate group that similarly have fewer than 10 pieces. Such mixed country packages must be

labeled with a facing slip marked ''Residual, Rate Group _____.'' The designated rate group (1, 2, 3, 4, 5, 6, 7, or 8) must be inserted as appropriate. The facing slip must be placed on the address side of the top piece of each package in such a manner that it will not become separated from the package. The pressure-sensitive labels and optional endorsement lines used domestically for presort mail are prohibited for International Surface Air Lift mail.

Exception: The 10-piece criterion applies when there are fewer than 10 pieces to the same country and those pieces weigh more than 11 pounds. Such mailpieces should be packaged together as a direct country package and placed in a direct country sack. Pieces that cannot be packaged because of their physical characteristics may be placed loose in the sack.

293.942 Sacking

Once packages of ISAL mail are prepared, the packages are then placed into one of three types of designated sacks:

a. Direct Country Sack. Prepare a direct country sack if there are at least 11 pounds of mail to the same country. The mail must be packaged and enclosed in a gray plastic ISAL sack and labeled to the country with PS Tag 155, Surface Airlift Mail. The maximum weight of a direct country sack must not exceed 66 pounds.

b. Mixed Country Package Sack. Prepare a mixed country package sack for those direct country packages where there is less than 11 pounds of mail to the same country. The mail must be packaged as direct country packages, identified with a facing slip showing the destination country or country separation, and enclosed in a green pouch labeled to the dropship ISAL service center. PS Tag 155 also must be attached to the sack. Prepare a mixed country package sack for each of the respective rate groups for which there is a direct country package and label as follows:

Rate group 1—AMC Kennedy—JFK 003
Rate group 2—AMC Miami 33159
Rate group 3—AMC Kennedy—JFK 003
Rate group 4—AMC San Francisco 941
Rate group 5—AMC Kennedy—JFK 003
Rate group 6—AMC Miami 33159
Rate group 7—AMC San Francisco 941
Rate group 8—AMC Kennedy—JFK 003

c. Residual Sack. Prepare a residual sack for those packages of mail that contain fewer than 10 pieces or less than 1 pound of mail to any one country (residual packages). The mail must be packaged as residual packages, appropriately identified with a facing slip, and enclosed in a green pouch labeled to the drop shipment ISAL service center. PS Tag 155 also must be attached to the sack. The mailer must prepare a residual sack for each of the respective rate groups for which there is a residual package and label it as follows:

Rate group 1—AMC Kennedy—JFK 003
Rate group 2—AMC Miami 33159
Rate group 3—AMC Kennedy—JFK 003
Rate group 4—AMC San Francisco 941
Rate group 5—AMC Kennedy—JFK 003
Rate group 6—AMC Miami 33159
Rate group 7—AMC San Francisco 941
Rate group 8—AMC Kennedy—JFK 003

293.943 Sack Labeling

Depending on the type of sack, labels are prepared as follows:

a. Direct Country Sack. For a direct country sack, use a gray plastic ISAL sack. Use PS Tag 155 to label each sack with the destination country's name. Mailers must complete four blocks on PS Tag 155:

(1) To (Pour) Block: Enter the name of the ISAL country foreign exchange office, its three-letter exchange office code, and the country's name. See Exhibit 293.71 for the name of the foreign exchange office and its three-letter exchange office code. As an example, for Ireland, this block will be as follows: Dublin DUB Ireland

(2) Customer Permit No. Block: Enter permit number.

(3) Kg Block: Enter the combined weight of the sack and its contents in kilograms (1 pound = 0.4536 kilogram).

(4) Date Block: Enter date as shown on PS Form 3650, Statement of Mailing International Surface Air Lift. After completing the above items on PS Tag 155, attach it to the neck of the sack.

b. Mixed Country Package Sack. For a mixed country package sack, use a domestic green nylon pouch and label it to the appropriate drop shipment ISAL service center as follows:

Rate group 1—AMC Kennedy—JFK 003
Rate group 2—AMC Miami 33159
Rate group 3—AMC Kennedy—JFK 003
Rate group 4—AMC San Francisco 941
Rate group 5—AMC Kennedy—JFK 003
Rate group 6—AMC Miami 33159
Rate group 7—AMC San Francisco 941
Rate group 8—AMC Kennedy—JFK 003

Labels are prepared as follows:

Content:
Line 1: Drop Shipment ISAL Service Center
Line 2: ISAL DRX
Line 3: Mailer and Mailer Location

Example:

```
AMC KENNEDY—JFK 003
ISAL DRX
ABC Company New York NY
```

For the mixed country package sack label, use Content Identification Number (CIN) 753.

In addition, use PS Tag 155 to label each sack with the appropriate drop shipment ISAL service center. Mailers must complete four blocks on PS Tag 155:

(1) To (Pour) Block: Enter the name of the drop shipment ISAL service center and rate group:

Rate group 1—AMC Kennedy—JFK 003
Rate group 2—AMC Miami 33159
Rate group 3—AMC Kennedy—JFK 003
Rate group 4—AMC San Francisco 941
Rate group 5—AMC Kennedy—JFK 003
Rate group 6—AMC Miami 33159
Rate group 7—AMC San Francisco 941
Rate group 8—AMC Kennedy—JFK 003

(2) Customer Permit No. Block: Enter your permit.

(3) Kg Block: Enter the combined weight of the sack and its contents in kilograms (1 pound = 0.4536 kilogram).

(4) Date Block: Enter date as shown on PS Form 3650.

After completing the above items on PS Tag 155, attach it to the sack.

c. Residual Sack. For a residual sack, use a domestic green nylon pouch and label it to the appropriate drop shipment ISAL service center as follows:

Rate group 1— AMC Kennedy—JFK 003
Rate group 2—AMC Miami 33159
Rate group 3—AMC Kennedy—JFK 003
Rate group 4—AMC San Francisco 941
Rate group 5—AMC Kennedy—JFK 003
Rate group 6—AMC Miami 33159
Rate group 7—AMC San Francisco 941
Rate group 8—AMC Kennedy—JFK 003

Labels are prepared as follows:

Content:
Line 1: Drop Shipment ISAL Service Center
Line 2: ISAL WKG
Line 3: Mailer and Mailer Location

Example:

```
AMC KENNEDY—JFK 003
ISAL WKG
ABC COMPANY NEW YORK NY
```

For the residual sack label, use CIN 754.

In addition, use PS Tag 155 to label each sack with the appropriate drop shipment ISAL service center. Mailers must complete three blocks on PS Tag 155:

(1) To (Pour) Block: Enter the name of the drop shipment ISAL service center and rate group:

Rate group 1—AMC Kennedy—JFK 003

Rate group 2—AMC Miami 33159
Rate group 3—AMC Kennedy—JFK 003
Rate group 4—AMC San Francisco 941
Rate group 5—AMC Kennedy—JFK 003
Rate group 6—AMC Miami 33159
Rate group 7—AMC San Francisco 941
Rate group 8—AMC Kennedy—JFK 003

(2) Customer Permit No. Block: Enter your 10-digit ISAL permit or customer identification number.

(3) Kg Block: Enter the combined weight of the sack and its contents in kilograms (1 pound = 0.4536 kilogram).

(4) Date Block: Enter date as shown on PS Form 3650.

After completing the above items on PS Tag 155, attach it to the sack.

293.944 Sack Separation

When presenting an ISAL shipment to the Postal Service, the mailer must physically separate the sacks of mail by type (direct, mixed, residual) and rate group (1, 2, 3, 4, etc.) at time of mailing.

293.945 Direct Sacks to One Addressee (M–Bags) for ISAL

M-bags may be sent in the ISAL service to all ISAL destination countries. Weight, makeup, sacking, and sorting requirements must conform to 260. PS Tag 158 must show the complete address of the addressee and the sender. PS Tags 155 and 158 must be attached securely to the neck of each sack. M-bags may not contain small packets.

293.95 Mailer Notification

Mailers who wish to mail shipments that weigh over 750 pounds but who are not eligible for direct shipment rates must notify the ISAL coordinator at the office of mailing at least 14 days before the planned date of mailing. Specific country information and weight per country must be provided. No prior notification is required for mailers with 750 pounds or less.

294 Publishers' Periodicals

294.1 Description

294.11 Definition

Publishers' periodicals are domestically approved Periodicals Mail publications. See DMM E211.

294.12 Eligibility

Publishers' periodicals may be mailed only by publishers and registered news agents. When mailed by individuals, this type of publication is subject to regular printed matter postage rates.

294.2 Postage

294.21 Rates

See Individual Country Listings for rates.

294.22 Special Rates

There are no unique international postage rates that specifically apply to either nonprofit organizations or to classroom publications. If otherwise qualified, those categories of senders may enter their mail at publishers' periodicals rates. See 294.62 for the conditions of mailing governing a postage rate discount for publishers or registered news agents who drop ship their mail at the New Jersey International and Bulk Mail Center (NJI&BMC).

294.23 Sample Copies

Complete sample copies may be mailed at the rates for publishers' periodicals, whether or not the number of such sample copies exceeds 10 percent of the subscriber copies.

294.24 Single Copies Mailed to Countries Other Than Canada

Single copies of publishers' periodicals addressed to all countries except Canada must be placed in wrappers or envelopes.

294.25 Single Copies Mailed to Canada

Single copies of publishers' periodicals may be entered without envelopes or wrappers, provided the mailing is sorted and packaged in the manner prescribed in 294.4. The exemption from the wrapper requirement is not applicable to copies addressed for delivery at Canadian overseas military post offices (CFPOs).

294.26 Payment of Postage

Postage on publishers' periodicals mailed by the publisher or by a registered news agent may be paid (1) by means of postage stamps or postage meter stamp, or (2) from deposits of money made with the postmaster by the publisher or news agent. When the postage is paid from money on deposit with the postmaster, the postage charges are computed on PS Form 3541, Periodicals One Issue or One Edition; PS Form 3541–M, Periodicals—All Issues in a Calendar Month; or PS Form 3540–S, Postage Statement—Supplement; filed by the publisher or news agent and completed by the postmaster.

294.27 Postage on Mailings While Application Pending

Postage at the regular printed matter rates must be paid for mailings of publications on which an application for Periodicals Mail privileges is pending. When the application is approved, postage charges should be adjusted on reported mailings based on rates for publishers' periodicals and according to the general procedure provided in DMM E216.

294.28 Per Copy Rate of Postage

Postage at the per-copy rate must be charged on all individually addressed copies of publishers' periodicals. All copies reported on PS Forms 3541–N or 3541–R, whether addressed or unaddressed, are subject to a per-copy rate. If a publisher or registered news agent prefers, he or she may pay postage on unaddressed copies to be mailed in bulk packages by affixing the appropriate postage to the wrappers of the packages.

294.3 Weight and Size Limits

294.31 Weight Limit

The weight limit for individually addressed items is 4 pounds.

294.32 Size Limits

294.321 Envelopes and Packages

a. Minimum length and height: 5½ x 3½ inches.

b. Minimum depth (thickness): .007 inch.

c. Maximum length: 24 inches.

d. Maximum length, height, depth (thickness) combined: 36 inches.

294.322 Rolls

a. Minimum length: 4 inches.

b. Minimum length plus twice the diameter combined: 6¾ inches.

c. Maximum length: 36 inches.

d. Maximum length plus twice the diameter combined: 42 inches.

294.4 Makeup Requirements for Publishers' Periodicals

294.41 Sortation

Publishers' periodicals must be sorted into city and country packages as follows:

a. City packages must be prepared when six or more copies are addressed to the same city. Packages may be prepared by foreign alphanumeric postal codes. Each package must bear a facing slip showing the city and country of destination. Packages that destinate in Canada must be prepared using the Canadian postal codes that are specified in Exhibit 294.43a (standard entry) or Exhibit 294.43b (drop shipment at NJI&BMC). At the mailer's option, a finer presort based on Canadian postal codes may be used.

b. When six or more copies for the same country remain after the city packages are prepared, country packages must be prepared. Each country package must bear a facing slip showing the country of destination.

c. Copies remaining after city and country packages are prepared are

residual copies. Residual copies must be packaged and bear a facing slip marked ''MIXED WORKING FOREIGN.'' The packages must be labeled to the appropriate international exchange office or, for Canadian-bound mail, a concentration center as instructed by the post office of mailing.

d. All pieces in a package must have the address side facing up. Each package must be securely banded or tied with rubber bands or string to withstand handling without breakage or damage and to prevent injury to postal personnel or damage to sorting equipment.

e. Single copies of publications addressed for delivery in Canada that are not enclosed in wrappers or envelopes under 294.25 must be included in packages that are protected with cardboard, fiberboard, or other protective covering. The package label (facing slip) must bear these notations:

''OPEN AND DISTRIBUTE''

''Periodicals Mail Postage Paid at * * *''

or, as applicable,

''Periodicals Mail Postage Paid at * * * and Additional Mailing Offices.''

Note: Under DMM C200.12.3, the simplified endorsement ''PERIODICALS MAIL'' may be placed on the package label (facing slip) in lieu of either of the above.

294.42 Sacking and Labeling

294.421 Country Sacks and Labels (Except Canada)

Publishers' periodicals must be sacked and labeled when there are 11 pounds of mail to a particular country or country separation. All city and country packages must be included in the same country sack. See Exhibit 294.52 for separations, city, and routing ZIP Codes. Each sack must be labeled to show the destination, contents (''NEWS'' or ''PER''), and entry post office as follows:

Label color: Blue

Format:

Line 1: Destination exchange office code and routing ZIP Code for applicable USPS exchange office

Line 2: Contents (''NEWS'' or ''PER'') and ''AO''

Line 3: City and state of post office of mailing and ZIP Code

Example

```
TAN CHINA 945
PER AO
Alexandria VA 22315
```

Note: Two or more separations are required when publishers' periodicals are mailed to China, Great Britain, Japan, and Mexico (see Exhibit 294.42). For each of those four countries, the destination exchange office name is used along with the city code and the country name.

Example:

```
PEK BEIJING CHINA 945
PER AO
Alexandria VA 22315
```

294.422 Residual Sacks

After the required country sacks are prepared, the remaining city, country, and residual packages must be sacked and labeled to the international exchange office as directed by the entry post office. Each sack must be labeled as follows:

Label color: Pink

Format:

Line 1: International exchange office and routing ZIP Code for applicable USPS exchange office

Line 2: Contents (''NEWS'' or ''PER''), ''AO'' and ''Mixed Working Foreign''

Line 3: City and state of post office of mailing and ZIP Code

Example

```
FOREIGN CTR NJ 099
NEWS AO MIXED WORKING FOREIGN
Alexandria, VA 22315
```

Note: See 294.62 for a sacking exception for residual mail that is applicable only to publishers or registered news agents who drop ship their mail at the New Jersey International and Bulk Mail Center (NJI&BMC).

Exhibit 294.42 Publishers' Periodicals—All Countries (Except Canada) Labeling and Routing Information

[Exhibit not included. Formerly Exhibit 244.52.]

294.43 Canadian Sacks

Sacks of publishers' periodicals for delivery in Canada must be sorted by the Canadian post code designations that are specified in Exhibit 294.43a (standard entry) or Exhibit 294.43b (drop shipment at NJI&BMC) and labeled in the following manner:

Label color: White or terra-cotta

Format:

Line 1: Name of destination office in Canada is left-justified; routing ZIP Code for applicable USPS exchange office is right-justified

Line 2: Content designation (i.e., ''NEWS'' or ''PER'') followed by ''AO''

Line 3: City, state, and ZIP Code of U.S. post office of mailing

Example

```
OTTAWA ON FWD 099
PER AO
Bethesda MD 20815
```

Residual mail for Canada is prepared under 294.422, except it is labeled to the local concentration center. See 294.62 for a sacking exception for residual mail that is applicable only to publishers or registered news agents who drop ship their mail at the New Jersey International and Bulk Mail Center (NJI&BMC).

Exhibit 294.43a Publishers' Periodicals—Canada Labeling and Routing Information (Standard Entry)

[Exhibit not included. Formerly Exhibit 244.53a.]

Exhibit 294.43b Publishers' Periodicals—Canada Labeling and Routing Information (Drop Shipment at NJI&BMC)

[Exhibit not included. Formerly Exhibit 244.53b.]

294.44 Physical Characteristics and Requirements for Sacks

Sacks must meet these requirements:

a. Maximum Weight. No more than 66 pounds of mail may be placed in any one sack. The weight of tying, wrapping, and packaging materials is included in determining the weight of the mail enclosed in a sack.

b. Sacks. Disposable gray plastic sacks are recommended; however, other appropriate equipment may be provided by the post office.

c. Labels. Handbook PO–423, Requisitioning Labels, contains instructions for ordering labels. Mailers may also preprint labels if they are of the colors specified and used by the Postal Service.

294.5 Customs Forms Required

Printed matter known to be dutiable in the country of destination must have a green customs label (PS Form 2976) affixed to the address side of the articles. (See 123 for detailed requirements for customs documentation.) This requirement is applicable to dutiable printed matter mailed in a direct sack (M-bags) (see 260).

294.6 Mailing Locations

294.61 Standard Entry

Surface mail that is entered at publishers' periodicals rates must be prepared in accordance with the provisions of 244.5 and tendered at a post office or other location that has been designated by the local postmaster.

294.62 Drop Shipment

A publisher or registered news agent who deposits publishers' periodicals directly at the New Jersey International & Bulk Mail Center (NJI&BMC), under a drop shipment authorization, is eligible for a $0.25 per pound postage rate discount, when the following conditions of entry are met:

a. The mailer must obtain a drop shipment authorization (PS Form 8125, Plant-Verified Drop Shipment (PVDS) Verification and Clearance) from the post office of original/additional entry, the business mail entry unit (BMEU), or the detached mail unit (DMU) where their mailing records are maintained.

b. The mailer must bring their sorted publishers' periodicals to the postal location referenced in 294.62a, where USPS acceptance employees will check the statement of mailing to ensure proper application of the $0.25 per pound drop ship discount; confirm funds availability; and verify compliance with the prescribed mail makeup requirements.

c. Publishers' periodicals that are to be drop shipped at the NJI&BMC are subject to the mail makeup requirements contained in 294.41 and 294.42, except as specified below.

Exception: A drop shipment customer who has fewer than 11 pounds of publishers' periodicals for a particular country or country separation is required to place those residual mailpieces into a country-specific ''skin'' sack rather than aggregating them into a mixed working foreign sack, as specified in 294.422. Residual bundles or packages that are placed into a skin sack are subject to the sorting, sacking, and labeling requirements for country sacks that are contained in 294.41 (except 294.41c) and 294.421, for all countries except Canada, and in 294.43 for Canada only.

d. A publisher or agent who has a minimum of 250 pounds of mail for a single destination country may dispense with the use of sacks by placing the requisite presorted bundles or packages onto a strapped or shrink-wrapped pallet. To be admissible, a palletized load of discounted publishers' periodicals must conform to the mailing standards contained in DMM M041; adhere to the mail preparation requirements referenced in DMM M045, and be placarded (labeled) in accordance with the provisions of DMM M031.4.0.

e. Once the acceptance process is completed, the verified mailpieces and accompanying paperwork will be turned back to the publisher or agent who will transport the sacks or pallets to the NJI&BMC. Prior to bringing their mail to that postal facility, the publisher or agent must schedule a drop shipment appointment through the appropriate appointment control center as specified in DMM E652.3.4. The relevant statement of mailing and drop shipment authorization (PS Form 8125) must be presented at the time of entry.

f. Publishers' periodicals that are enclosed in direct sacks of printed matter to one addressee (M-bags) are not subject to the $0.25 per pound postage discount that is referenced in this section. See 245.222 for the postage payment procedures governing M-bags.

295 Books and Sheet Music

295.1 Description

295.11 Definition

This classification encompasses:

a. Books (including books issued to supplement other books) that have the following characteristics:

(1) Eight or more printed pages.

(2) Consist wholly of reading matter or scholarly bibliography, or reading matter with incidental blank spaces for notations.

(3) Contains no advertising matter other than incidental announcements of books, in the form of book pages, and other bound and loose enclosures that are permissible under the provisions of DMM E620.4.4. Advertising includes paid advertising and publishers' own advertising in display, classified, or editorial style.

b. Printed sheet music.

295.12 Minimum Quantity Requirements

To qualify for this service mailers must have a minimum of 50 pounds of mail or 200 pieces.

295.2 Postage

295.21 Rates

See Individual Country Listings for rates.

295.22 Postage Payment Methods

Nonidentical weight piece mailings must have the applicable postage affixed meter stamps. Identical-weight piece mailings may be paid by meter stamps, or permit imprint subject to certain standards. Mailers may use a permit imprint with nonidentical pieces only if authorized by the USPS under a Manifest Mailing System (MMS), as specified in DMM P710. All mailings are reported on PS Form 3651, Postage Statement—International Permit Imprint Mail.

295.3 Weight and Size Limits

295.31 Weight Limit

The weight limit for individually addressed items is 4 pounds.

295.32 Size Limits

295.321 Envelopes and Packages

a. Minimum length and height: 5½ x 3½ inches.

b. Minimum depth (thickness): .007 inch.

c. Maximum length: 24 inches.

d. Maximum length, height, depth (thickness) combined: 36 inches.

295.322 Rolls

a. Minimum length: 4 inches.

b. Minimum length plus twice the diameter combined: 6¾ inches.

c. Maximum length: 36 inches.

d. Maximum length plus twice the diameter combined: 42 inches.

295.4 Makeup Requirements for Books and Sheet Music

295.41 Endorsements

The sender must endorse the address side ''BOOKS'' or ''SHEET MUSIC'' on all items containing books or sheet music and paid at those rates.

295.42 Sortation

Books and sheet music must be sorted into country packages as follows:

a. Country packages must be prepared when six or more copies are addressed to the same country. Packages may be prepared according to foreign alphanumeric postal codes. Each package must bear a facing slip showing the country of destination. Packages that destinate in Canada must be prepared using the Canadian postal codes that are specified in Exhibit 295.43. At the mailer's option, a finer presort based on Canadian postal codes may be used.

b. Copies remaining after country packages are prepared are residual copies. Residual copies must be packaged and bear a facing slip marked ''MIXED WORKING FOREIGN.'' The packages must be labeled to the appropriate international exchange office or, for Canada-bound mail, a concentration center as instructed by the post office of mailing.

c. All pieces in a package must have the address side facing up. Each package must be securely banded or tied with rubber bands or string to withstand handling without breakage or damage and to prevent injury to postal personnel or damage to sorting equipment.

295.43 Sacking and Labeling

295.431 Country Sacks and Labels (Except Canada)

Books and sheet music must be sacked and labeled when there are 11 pounds of mail to a particular country or country separation. All country packages must be included in the same country sack. See Exhibit 294.42 for separations, city, and routing ZIP Codes. Each sack must be labeled to show the destination, contents, and entry post office as follows:

Label color: Blue
Format:
Line 1: Destination exchange office code and country routing ZIP Code
Line 2: Contents ''AO''
Line 3: City and state of post office of mailing and ZIP Code
Example:

```
TAN CHINA 945
AO
ALEXANDRIA VA 22315
```

Note: Two or more separations are required for mail to China, Great Britain, Japan, and Mexico (see Exhibit 295.42). For each of those four countries, the destination exchange office name is used along with the city code and the country name.

Example:

```
PEK BEIJING CHINA 945
AO
ALEXANDRIA VA 22315
```

295.432 Residual Sacks

After the required country sacks are prepared, residual packages must be sacked and labeled to the international exchange office as directed by the entry post office. Each sack must be labeled as follows:

Label color: Pink
Format:
Line 1: International exchange office and routing ZIP Code
Line 2: Contents ''AO'' and ''Mixed Working Foreign''
Line 3: City and state of post office of mailing and ZIP Code
Example:

```
FOREIGN CTR NJ 099
AO MIXED WORKING FOREIGN
ALEXANDRIA VA 22315
```

Exhibit 295.432 Books and Sheet Music—All Countries (Except Canada) Labeling and Routing Information

[Exhibit not included. Same as former 244.52.]

295.44 Canadian Sacks

Sacks of books or sheet music for delivery in Canada must be sorted by the Canadian post code designations that are specified in Exhibit 295.43 and labeled in the following manner:

Label color: White or terra-cotta
Format:
Line 1: Name of destination office in Canada is left-justified; routing ZIP Code for applicable USPS exchange office is right-justified
Line 2: Content designation ''AO''
Line 3: City, state, and ZIP Code of U.S. post office of mailing
Example:

```
OTTAWA ON FWD 099
AO
BETHESDA MD 20815
```

Residual mail for Canada is prepared under 295.422, except it is labeled to the local concentration center.

Exhibit 295.44 Books and Sheet Music—Canada Labeling and Routing Information

[Exhibit not included. Same as former 244.53a.]

295.45 Physical Characteristics and Requirements for Sacks

Sacks must meet these requirements:

a. Maximum Weight. No more than 66 pounds of mail may be placed in any one sack. The weight of tying, wrapping, and packaging materials is included in determining the weight of the mail enclosed in a sack.

b. Sacks. Disposable gray plastic sacks are recommended; however, other appropriate equipment may be provided by the post office.

c. Labels. Handbook PO–423, Requisitioning Labels, contains instructions for ordering labels. Mailers may also preprint labels if they are of the colors specified and used by the Postal Service.

295.5 Customs Forms Required

Printed matter known to be dutiable in the country of destination must have a green customs label (PS Form 2976) affixed to the address side of the articles. (See 123 for detailed requirements for customs documentation.) This requirement is applicable to dutiable printed matter mailed in a direct sack (M-bags).

296 [Reserved]

297 International Customized Mail

297.1 Description

International Customized Mail (ICM) service is an international business mail service that is available only pursuant to an ICM service agreement between the Postal Service and a mailer meeting the requirements in 297.2. The Postal Service provides ICM service on a mailer-specific basis pursuant to the terms and conditions stipulated in a particular ICM service agreement.

297.2 Qualifying Mailers

To qualify for ICM service, a mailer must be capable, on an annualized basis, of either (1) tendering at least 1 million pounds of international mail to the Postal Service, or (2) paying at least $2 million in international postage to the Postal Service. The mailer must also be capable of tendering all of its ICM mail to the Postal Service.

297.3 ICM Service Agreements

Each ICM service agreement must set forth the following:

a. The term of the agreement, including any renewal options.

b. The type of mail to be tendered by the mailer.

c. The destination country or countries.

d. The services to be provided by the Postal Service, including any speed-of-delivery targets.

e. Minimum volume commitments for each service.

f. Postage and method of payment.

g. Weight and size limits.

h. Preparation requirements.

i. Makeup requirements.

j. Any other obligations of either party.

k. The location from which the mailer is required to tender its items to the Postal Service.

297.4 Postal Bulletin Notifications

Within 30 days of entering into an ICM service agreement, the Postal Service must publish the following information about the agreement in the *Postal Bulletin:*

a. The term of the agreement, including any renewal options.

b. The type of mail involved.

c. The destination country or countries.

d. A brief description of each of the services to be provided by the Postal Service.

e. Minimum volume commitments for each service.

f. A brief description of any worksharing to be performed by the mailer.

g. The agreed-upon rate for each service at the volume level committed to by the mailer.

3 SPECIAL SERVICES

310 Certificate of Mailing

* * * * *

312 Availability

Customers can purchase a certificate of mailing when they send unregistered

letter-post, post/postal cards, matter for the blind, and uninsured parcel post or require a duplicate of an original certificate that pertained to a previously mailed item. A certificate of mailing cannot be obtained in combination with registered mail, insured parcel post, recorded delivery, or bulk mailings of 200 pieces or more that bear a permit imprint.

* * * * *

313 Fees

313.1 Individual Pieces

The fee for certificates of mailing for ordinary letter-post and ordinary parcel post is $0.75 per piece, whether the item is listed individually on PS Form 3817, Certificate of Mailing, or on firm mailing bills. Additional copies of PS Form 3817 or firm mailing bills are available for $0.75 per page. PS Form 3877, *Firm Mailing Book for Accountable Mail,* or forms printed at the mailer's expense may be used for certificates of three or more pieces of mail of any class presented at one time. If mailer-printed forms are used instead of PS Form 3877, these forms must contain, at a minimum, the same information as PS Form 3877. The fee is $0.25 per article.

313.2 Bulk Pieces

Identical pieces of ordinary letter-post mail that are paid for with regular postage stamps, precanceled stamps, or meter stamps are subject to the following certificate of mailing fees:

Pieces	Fee
Up to 1,000	$3.50
Each additional 1,000 or fraction	.40
Duplicate copy	.75

* * * * *

320 Insurance

* * * * *

322 Availability

Insurance is available only for parcel post and only to certain countries. See Individual Country Listings. Insurance is not available for letter-post items.

* * * * *

330 Registered Mail

* * * * *

332 Availability

Customers can purchase registered mail service when they send letter-post, post/postal cards, and matter for the blind. Registered mail service is not available in combination with parcel post or M-bags to one addressee. See Individual Country Listings for country-specific prohibitions and restrictions on registered mail service usage.

333 Fees and Indemnity Limits

333.1 Registration Fees

The registry fee for all countries is $7.25.

Exception: See the Individual Country Listing for Canada.

* * * * *

334 Processing Requests

* * * * *

334.2 Marking

The accepting clerk must enter the following endorsements and special markings on each registered item:

a. Affix Label 200 as noted above. All registered mail of U.S. origin must bear a Label 200.

[Items b and c are unchanged.]

* * * * *

334.3 Postmarking

334.31 Placement

Postmark registered items twice on the back, on the crossing of the upper and lower flaps. If return receipts are used, postmark partially on the receipt and partially on the flaps of the letter. Items sealed on the address side must be postmarked on the address side.

* * * * *

334.33 Registered Printed Matter or Small Packets

[Delete.]

334.4 Sealing

334.41 Sender's Responsibility

Senders must securely seal letter-post items presented for registration. * * *

* * * * *

334.43 Registered Printed Matter or Small Packets

[Delete.]

* * * * *

340 Return Receipt

* * * * *

343 Fee

The fee for a return receipt is $1.50 and must be paid in addition to postage and other applicable charges. * * *

* * * * *

350 Restricted Delivery

* * * * *

353 Fee

Fee is $3.20 and is in addition to postage and other applicable fees.

* * * * *

[Delete sections 360, 370, and 380. Renumber 385 as 360.]

360 Recorded Delivery

* * * * *

362 Availability

Recorded delivery service is available in conjunction with the mailing of letter-post items, post/postal cards, aerogrammes, matter for the blind, and M-bags. Recorded delivery is not available to all countries. See the Individual Country Listing.

363 Recorded Delivery Fee

The recorded delivery fee is $1.90 and is in addition to postage and other special service fees, if applicable.

* * * * *

[Renumber 390, Supplemental Services, as 370.]

370 Supplemental Services

* * * * *

371 International Money Orders

* * * * *

371.3 Fees

There are two fees for international money orders:

a. The fee for money orders payable in countries that accept the pink International Postal Money Order Form (MP1) is $3.25 per money order. * * *

[Item b is unchanged.]

* * * * *

372 International Reply Coupons

* * * * *

372.3 Selling Price and Rate of Exchange

a. The selling price of a reply coupon in the United States is $1.75. * * *

b. International reply coupons purchased in foreign countries are exchangeable at U.S. post offices toward the purchase of postage stamps, postage meter stamps, postage validation imprinter (PVI) labels, and embossed stamped envelopes (including aerogrammes) at the rate of $0.80 per coupon, irrespective of the country where they were purchased.

* * * * *

373 International Business Reply Service

* * * * *

373.4 Fees

The fees for IBRS are as follows:

a. Envelopes up to 2 ounces: $1.20.

b. Cards: $0.80.

Note: The fee for each returned IBRS envelope and card includes the per piece charge that is applied to domestic business reply and subject to QBRM accounting procedures. It is not necessary for the sender to obtain a separate international business

reply permit to have IBRS items processed through their advance deposit account.

* * * * *

4 TREATMENT OF OUTBOUND MAIL

* * * * *

420 Shortpaid and Unpaid Mail

* * * * *

422.2 No Return Address

422.21 Letter-Post and Postcards

Unpaid letter-post and postcards with no return address must be forwarded to the appropriate exchange office. * * *

* * * * *

423 Shortpaid Mail

423.2 Exceptions

* * * * *

423.21 Letter-Post and Postcards

Shortpaid letter-post and postcards with no return address must be forwarded to the exchange office. Imprint with stock rubber stamp R–1300–4, Postage Due * * * Cents. Do not enter the amount of the deficiency.

Exception: For shortpaid letter-post and postcards to Canada having no return address, enter double the amount of the deficiency.

423.22 Printed matter and Small Packets

[Delete.]

423.23 Parcels

[Renumber as 423.22.]

423.24 Global Express Mail Shipments

[Renumber as 423.23.]

* * * * *

430 Improperly Prepared Mail

* * * * *

433 Oversized Cards

Return oversized cards (those exceeding 9¼ x 4¾ inches) to the sender. If the sender is unknown, dispatch cards to the exchange office.

434 Reply-Paid Cards

a. Reply-paid cards, except International Business Reply items, are not accepted as international mail.

[Item b is unchanged.]

* * * * *

440 Special Services Mail

* * * * *

442 Special Delivery

[Delete.]

* * * * *

443 Special Handling

[Delete.]

* * * * *

5 NONPOSTAL EXPORT REGULATIONS

* * * * *

550 Dried Whole Eggs

* * * * *

552 Charges

A charge of $0.75 will be made for each certificate of mailing, or for each package if a single certificate covers more than one package. * * *

* * * * *

560 Tobacco Seeds and Tobacco Plants

* * * * *

562 Charges

A charge of $0.75 will be made for each permit presented by the sender and for each package when a single permit covers more than one package. * * *

* * * * *

7 TREATMENT OF INBOUND MAIL

711 Customs Examination of Mail Believed to Contain Dutiable or Prohibited Articles

* * * * *

711.3 Examination of Registered Mail and Sealed Letters

The postmaster or other designated employee must be present when registered mail and sealed letters (except unregistered sealed letter mail bearing a green customs label) are opened by customs officers for examination. After customs treatment, the customs officer will repack and reseal the mail.

* * * * *

712 Customs Clearance and Delivery Fee

* * * * *

712.3 Amount of USPS Fee

The USPS fee for customs clearance and delivery for each dutiable item is $4.50.

* * * * *

713 Treatment of Dutiable Mail at Delivery Office

* * * * *

713.4 Payment of Duty

* * * * *

713.43 Registration of Items to be Returned to the United States

* * * * *

713.432 Certification by Postal Service Personnel

[In item c, change ''$0.50'' to ''$0.75.'']

* * * * *

730 Shortpaid Mail to the United States

731 Computation of Postage Due

a. [Unchanged.]
b. [Change ''$0.42'' to ''$0.45.'']
c. [Unchanged.]
d. [Unchanged.]

* * * * *

740 Irregular Mail

* * * * *

[Delete 742. Renumber 743, 744, and 745 as 742, 743, and 744, respectively.]

742 Stamps Not Affixed

* * * * *

750 Special Services

* * * * *

[Delete 755 and 756. Renumber 757 as 755.]

755 Recorded Delivery

* * * * *

[Delete 760. Renumber 770 through 790 as 760 through 780, respectively.]

760 Forwarding

* * * * *

762 Mail of Domestic Origin

* * * * *

762.2 Undeliverable Domestic Mail Bearing U.S. Postage and a Foreign Return Address

a. [Unchanged.]
b. [Unchanged.]
c. [Change ''letter class'' to ''First-Class.'']
d. [Unchanged.]

* * * * *

770 Undeliverable Mail

* * * * *

771 Mail of Domestic Origin

* * * * *

771.5 Return Charges for Letter-Post Mail

The following charges must be collected from the sender for mail returned to the United States by foreign postal services:

a. The return charge paid by publishers or registered news agents who originally mailed publishers' periodicals to Canada is the same as the economy (surface) letter-post postage rate for an item of the same weight mailed from the United States to

Canada. The airmail letter-post rate may be used if it is less than the economy letter-post rate. See Individual Country Listings for fees.

b. [Unchanged.]

c. [Unchanged.]

d. For economy letter-post the return charge is the same as economy (surface) letter-post postage rate for an item of the same weight mailed from the United States to the original country of destination. The airmail letter-post rate may be used if it is less than the economy letter-post rate. See the Individual County Listings for fees.

e. [Unchanged.]

* * * * *

772 Mail of Foreign Origin

772.1 Marking

* * * * *

772.14 Method of Return

Undeliverable airmail letters and cards and all letter-post items marked ''PRIORITY'' are returned to origin by air. All parcels and other items are returned by surface. Any ''AIRMAIL'' or ''PAR AVION'' endorsements or label must be obliterated on undeliverable items returned by surface.

* * * * *

772.4 Storage Charges

[Delete.]

* * * * *

9 INQUIRIES, INDEMNITIES, AND REFUNDS

* * * * *

920 Inquiries and Claims

* * * * *

922 Filing of Inquiries

922.1 Time Limits

Inquiries concerning letter-post mail and parcel post are accepted within six months from the day following the date of mailing.

* * * * *

928 Processing Inquiries

* * * * *

928.2 Mail Exchanged With Countries Other Than Canada

928.21 Forms Used

928.211 PS Form 542, Inquiry About a Registered Article or an Insured Parcel or an Ordinary Parcel

* * * * *

d. The loss, rifling, damage, or delay of outbound or inbound ordinary letter-post mail.

* * * * *

928.3 Mail Exchanged With Canada

* * * * *

928.35 Recorded Delivery Service

For inquiries related to the loss, total damage, or rifling of letter-post and matter for the blind items for which the recorded delivery fee has been paid:

* * * * *

940 Postage Refunds

941 Postage Refunds for Letter-Post and Parcel Post

941.1 General

A refund may be made when postage, special service fees, or other charges have been paid on letter-post and parcel post items:

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–30809 Filed 12–7–00; 8:45 am]

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Federal Register

Friday,
December 8, 2000

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 930

Coastal Zone Management Act Federal Consistency Regulations; Final Rule

DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

15 CFR Part 930

[Docket No. 990723202–0338–02]

RIN 0648–AM88

Coastal Zone Management Act Federal Consistency Regulations

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) revises the regulations implementing the federal consistency provision of the Coastal Zone Management Act of 1972 (CZMA). The Coastal Zone Act Reauthorization Amendments of 1990, enacted November 5, 1990, as well as the Coastal Zone Protection Act of 1996, enacted June 3, 1996, amended and reauthorized the CZMA. Among the amendments were revisions to the federal consistency requirement contained in section 307 of the CZMA. Current federal consistency regulations were promulgated in 1979 and are in need of revision after 20 years of implementation. The purpose of this final rule is to make such revisions.

DATES: Effective January 8, 2001.

FOR FURTHER INFORMATION CONTACT: David W. Kaiser, Federal Consistency Coordinator, Office of Ocean and Coastal Resource Management (N/ORM3), 1305 East-West Highway, 11th Floor, Silver Spring, MD 20910. Telephone: 301–713–3155, extension 144.

SUPPLEMENTARY INFORMATION:

I. Authority

This final rule is issued under the authority of the CZMA, 16 USC 1451 *et seq.*

II. Background

The following terms are defined for the purpose of this preamble:

The term ''management program'' means the objectives, policies and other requirements of a State coastal management program that has been federally approved by NOAA, pursuant to CZMA § 306.

The term ''State agency'' means the designated federal consistency agency for a particular management program.

The term ''consistency determination'' means the determination provided by a Federal agency to a State agency for a Federal agency activity under CZMA § 307(c)(1) that the Federal agency determines will have reasonably foreseeable effects on any land or water use or natural resource of a State's coastal zone (such effects are also referred to as ''coastal effects'' or ''effects on any coastal use or resource'').

The term ''negative determination'' means the determination provided by a Federal agency to a State agency for a Federal agency activity under CZMA § 307(c)(1) that the Federal agency determines will not have reasonably foreseeable coastal effects.

The term ''consistency certification'' means the certification provided by an applicant for a federal approval under CZMA § (c)(3) or a State agency's or local government's certification under CZMA § 307(d).

The term ''concurrence'' means a State agency's approval of a consistency determination, negative determination, or consistency certification.

The term ''objection'' means a State agency's disagreement/disapproval of a consistency determination, negative determination, or consistency certification.

The term ''enforceable policy'' means a policy that is legally binding under State law and is part of that State's management program.

The term ''maximum extent practicable'' means that Federal agencies must conduct their activities under CZMA § 307(c)(1) in a manner that is fully consistent with the enforceable policies of a management program, unless prohibited from full consistency by the requirements of federal law applicable to the activity.

The CZMA was enacted to develop a national coastal management program that comprehensively manages and balances competing uses of and impacts to any coastal use or resource. The national coastal management program is implemented by individual State management programs in partnership with the Federal Government. The CZMA federal consistency requirement, CZMA § 307, requires that Federal agency activities be consistent to the maximum extent practicable with the enforceable policies of a management program. The federal consistency requirement also requires that non-federal activities requiring federal permits, licenses or that receive federal financial assistance, be fully consistent with a State's federally approved management program. The federal consistency requirement is an important mechanism to address coastal effects, to ensure federal consideration of State management programs, and to avoid conflicts between States and Federal agencies by fostering early consultation and coordination.

Congress strongly re-emphasized the importance of consistency in the CZMA amendments of 1990 and specifically endorsed long-standing requirements of the CZMA consistency regulations. Thus, in making regulatory changes NOAA has been careful to adhere to statutory requirements and has given deference to the long-standing consistency provisions that comport with new statutory requirements. The implementation of consistency by the States and Federal agencies and guidance by NOAA, especially in the past few years, for the most part has been based on reasonableness, objectivity, collaboration and cooperation. The strength of revised regulations and State-Federal interaction needs to further these goals and be solidly grounded in the statute and long-standing usage. With that in mind, aside from the revisions required by the changes to the CZMA, it is not NOAA's intent to fundamentally change or ''weaken'' the consistency requirement. NOAA's intent is to clarify certain sections, provide additional guidance where needed, and provide States and Federal agencies with greater flexibility for Federal-State coordination and cooperation.

III. Coastal Zone Act Reauthorization Amendments of 1990

This final rule codifies changes made to CZMA § 307 in 1990. The Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) (Pub. L. No. 101–508) amended the CZMA to clarify that the federal consistency requirement applies when any federal activity, regardless of location, affects any land or water use or natural resource of the coastal zone. This new ''effects'' language was added by the CZARA to replace previous language that referred to activities ''directly affecting the coastal zone,'' establishing:

> a generally applicable rule of law that any federal agency activity (regardless of its location) is subject to [the consistency requirement] if it will affect any natural resources, land uses, or water uses in the coastal zone. No federal agency activities are categorically exempt from this requirement.

H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. 968–975, 970 (hereinafter Conference Report). The focus of the Federal agency's evaluation should be on coastal effects, not on the nature of the activity. The Conference Report

provides further clarification on the scope of the effects test:

> The question of whether a specific federal agency activity may affect any natural resource, land use, or water use in the coastal zone is determined by the federal agency. The conferees intend this determination to include effects in the coastal zone which the federal agency may reasonably anticipate as a result of its action, including cumulative and secondary effects. Therefore, the term ''affecting'' is to be construed broadly, including direct effects which are caused by the activity and occur at the same time and place, and indirect effects which may be caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Id. at 970–71. These changes reflect an unambiguous Congressional intent that all Federal agency activities meeting the ''effects'' test are subject to the CZMA consistency requirement; that there are no exceptions or exclusions from the requirement as a matter of law; and that the ''uniform threshold standard'' requires a factual determination, based on the effects of such activities on the coastal zone, to be applied on a case-by-case basis. *Id.;* 136 Cong. Rec. H 8076 (Sep. 26, 1990).

Other changes made to the CZMA by the CZARA include the addition of § 307(c)(1)(B) which, under certain circumstances, authorizes the President to exempt a specific Federal agency activity if the President determines that the activity is in the paramount interest of the United States. This section does not require implementing regulations. The CZARA also makes clear the requirement that Federal agency activities and federal license or permit and federal assistance activities must be consistent with the enforceable policies of management programs. Finally, the CZARA made technical and conforming changes to the other existing federal consistency requirements of CZMA §§ 307(c)(3)(A) and (B), and 307(d) for the purpose of conforming these existing sections with changes made to § 307(c)(1).

IV. CZARA and *Secretary of the Interior* v. *California*, 464 U.S. 312 (1984)

In 1984, the Supreme Court held that outer continental shelf (OCS) oil and gas lease sales by the Department of the Interior's Minerals Management Service were not activities subject to the CZMA consistency requirement as the lease sales did not directly affect the coastal zone. *Secretary of the Interior* v. *California,* 464 U.S. 312 (1984). In amending the CZMA federal consistency section in 1990, Congress overturned the effect of the decision in *Secretary of the Interior* and made it clear that OCS oil and gas lease sales are subject to the consistency requirement. Conference Report at 970. Congress also intended this change to clarify that other federal activities (in or outside the coastal zone) in addition to OCS oil and gas lease sales are subject to the federal consistency requirement. The remainder of the consistency discussion in the Conference Report makes this clear as does similar discussion in the Congressional Record, 136 Cong. Rec. H 8068 (Sep. 26, 1990) [hereinafter Congressional Record] (incorporated into the Conference Report, *see* Conference Report at 975).

Changes to the consistency section clarify that any federal activity is subject to the consistency requirement (regardless of location) if coastal effects are reasonably foreseeable, and that there are no categorical exemptions. Conference Report at 970. The discussion in the Conference Report on whether to list other federal activities that are subject to the consistency requirement, *e.g.*, activities under the Ocean Dumping Act, further clarifies that no federal activities are categorically exempt and that the determination of whether consistency applies is a case-by-case analysis based on reasonably foreseeable effects on any coastal use or resource. *See* Conference Report at 971.

The Congressional Record sheds further light on the intent and the scope of Congress' rejection of *Secretary of the Interior*. Congress not only rejected *Secretary of the Interior*, but eliminated the '''shadow effect'' of the Court's decision (*i.e.*, its potentially erosive effect on the application of the federal consistency requirements to other Federal agency activities) * * * and also to dispel any doubt as to the applicability of this requirement to all federal agency activities that meet the standard [*i.e.*, the effects test] for review.'' Congressional Record at H 8076.

Thus, the application of the consistency requirement is not dependent on the type of activity or what form the activity takes (*e.g.*, rulemaking, regulation, physical alteration, plan). Consistency applies whenever a federal activity initiates a series of events where coastal effects are reasonably foreseeable. *See* H.R. Rep. No. 1012, 96th Cong., 2d Sess. 4382. The CZMA, the Conference Report, and NOAA regulations are specifically written to cover a wide range of federal functions. The only test for whether a Federal agency function is a Federal agency activity subject to the consistency requirement is an ''effects test.'' Whether a particular federal action affects the coastal zone is a factual determination.

V. Coastal Zone Protection Act of 1996

On June 3, 1996, the President signed into law the Coastal Zone Protection Act of 1996 (CZPA), Pub. L. No. 104–150. Section 8 of the CZPA addresses the Secretarial override process whereby the Secretary of Commerce may override a State's consistency objection to a federal permit, license or funded project. Specifically, CZPA section 8 requires the Secretary to publish a notice in the **Federal Register** indicating when the decision record in a consistency appeal has closed. No later than 90 days after the date of publication of this notice, the Secretary is required to issue a final decision or publish another notice in the **Federal Register** detailing why the decision cannot be issued within the 90-day period. In the latter case, the Secretary is required to issue a decision no later than 45 days after the date of the publication of the notice. This final rule makes conforming changes in the Secretarial override regulations contained in subpart H of part 930.

VI. Purpose of This Final Rulemaking

A proposed rule to revise portions of the federal consistency regulations was published on April 14, 2000 (65 Fed. Reg. 20269–20302). The purpose of this final rule is to codify the 1990 and 1996 statutory changes to CZMA § 307, and to update the federal consistency regulations after 20 years of implementation by NOAA, States and Federal agencies. This final rule is also the result of a two year informal effort by NOAA to work with Federal agencies, State agencies, and other interested parties to identify issues and obtain comments on draft proposed revisions to the regulations. Thus, this final rule has already undergone substantial review and modification by Federal agencies, State agencies and other interested parties.

VII. Section-by-Section Discussion of Final Changes and Response to Comments on the Proposed Rule

Throughout part 930 NOAA makes a number of minor revisions, as well as a number of revisions that will implement the CZARA and the CZPA. The minor revisions include changes that will update the regulations and make them easier to use. The following is a section-specific discussion of some of these changes, as well as changes that will implement the CZARA and the CZPA. In addition, there were numerous comments on the proposed rule and NOAA. These comments are summarized under the relevant sections

below along with NOAA's response. While many commenters suggested changes to the regulations, these same Federal agencies, State agencies and others provided comments that noted the importance of and the improvements to the regulations, and the need to finalize the regulations. NOAA greatly appreciates these comments and the assistance that the Federal agencies, State agencies and other interested parties have provided to NOAA over the past three years to develop these revised regulations. Because of the number of changes made to the regulations, 15 CFR part 930 is published in its entirety in this **Federal Register** notice.

Subpart A—General Information

Minor changes are made to clarify that the obligations imposed by the regulations are for State agencies as well as for Federal agencies and other parties, and to clarify that the purpose of the regulations is to address both the need to ensure consistency of federal actions affecting any coastal use or resource with the enforceable policies of management programs and the importance of federal programs. Changes are made to encourage State agencies and Federal agencies to coordinate as early as possible, and to allow State agencies and Federal agencies to mutually agree to consistency procedures different from those contained in the regulations, providing that public participation requirements are still met and that all relevant management program enforceable policies are considered. Minor editorial changes are not individually identified in the section-by-section analysis.

Section 930.1(c). One commenter claimed that the proposed rule complicates rather than simplifies the administrative process. NOAA does not agree. The rule clarifies existing NOAA policy that State agencies, Federal agencies and applicants may mutually agree to augment or replace the requirements of the consistency regulations with other intergovernmental coordination efforts, so long as public participation requirements are met and the State agency is adequately enforcing its management program. Such intergovernmental coordination efforts may be more efficient and effective for the particular State and specific activity. Most States already have procedures to simplify and coordinate their consistency and other permit reviews. In addition, NOAA's changes improve the clarity of some sections that are currently cause for confusion. This increased clarity will provide a more predictable and better understood process.

Another commenter noted that public participation is an important element of the CZMA and should receive a high priority in the regulation. NOAA agrees and has made the last parenthetical in subsection (c) a clause within the sentence.

Section 930.1(e). One State commented that the section should retain reference to objectives of management programs, and not just to enforceable policies. NOAA disagrees. In 1990, Congress placed great emphasis on the need for State agency consistency decisions to be based on enforceable policies. *See* CZMA § 304(6a), Conference Report at 972. The CZMA was changed, in part, to expressly require consistency with enforceable policies. CZMA §§ 307(c)(1) and (c)(3)(A). Advisory policies are still addressed in section 930.39(c). The terms objectives, standards, policies and criteria are not retained, either for the reasons stated above, or because they are redundant with enforceable policies.

Sections 930.1(h) and (i) are removed. *See* below under sections 930.132–134, and subpart I.

Section 930.2 codifies the requirement for public participation for all types of consistency reviews which was added by CZARA, CZMA § 306(d)(14). Environmental groups commented that public participation should be required for ''negative determinations.'' NOAA disagrees. CZMA § 306(d)(14) requires that State agencies provide for public participation in the State agencies' review of consistency determinations (Federal agency activities), and other similar decisions. NOAA believes that this provision refers to consistency determinations and certifications which are submitted for activities which the project proponent reasonably expects will have coastal effects and where State agency review is required. Where a State agency decision or review is not required, public participation is not required. State agencies are required to review consistency determinations and certifications. *See* response to comment regarding section 930.3. Public notice under CZMA § 306(d)(14) is not required for State agency review of negative determinations, since a State agency is not required to review, and in fact may never review, a Federal agency's negative determination, which is a finding of no coastal effects. The new time frames for State agency review of negative determinations are only provided if a State agency decides to review a negative determination and to ensure that such a discretionary review occurs in a timely manner. If a Federal agency were to agree that coastal effects are reasonably foreseeable and that its negative determination was not correct, then the Federal agency would submit a consistency determination pursuant to subpart C, which would be subject to public comment.

Section 930.3 was formerly located at section 930.145. Two State commenters said that this section misconstrues the CZMA claiming that State agency implementation of federal consistency is not required, but is discretionary. NOAA does not agree. Another commenter recommended that the regulations allow citizens to petition NOAA if a citizen believes a management program is not being implemented. The comments regarding State agency obligation to perform consistency reviews incorrectly interprets CZMA program development, approval and continuing review requirements; the ''presumption'' language in CZMA § 307; and ignores the public participation requirement added by Congress in 1990. A coastal State voluntarily participates in the CZMA program. However, to obtain management program approval a State must develop a program pursuant to CZMA and NOAA regulatory guidelines. Further, to continue to have an approvable program, the coastal State must adhere to CZMA and NOAA regulatory implementation requirements and must implement its federally-approved management program. NOAA monitors such implementation through the CZMA § 312 evaluation process. Federal consistency is one of the requirements that a State must implement. If a State is not reviewing federal activities for consistency and allowing the public to comment on the State's reviews, then the State is not adequately implementing its federally-approved management program.

The CZMA contains numerous sections that are part of the requirement for States to implement federal consistency if the States want to maintain an approvable program. For example, CZMA § 306(d) requires States to implement federally-approved management programs, particularly §§ 306(d)(1) (management program adopted pursuant to NOAA regulations), § 306(d)(2)(D) (identification of the means by which the State will exert control over coastal uses), and § 306(d)(2)(F) (the organizational structure used to implement the management program).

Moreover CZMA § 312(a) requires the Secretary to evaluate State programs to ensure that a State has adequately

''implemented and enforced'' its program. If the State is not adequately implementing and enforcing its program the Secretary may suspend the State's grant for non-compliance, CZMA § 312(c)(1), and require the State to take necessary actions to remedy the non-compliance, CZMA § 312(c)(2)(A). If the State does not remedy the non-compliance, then the Secretary may withdraw program approval. CZMA § 312(d). A State cannot adequately implement its management program unless the State ensures, through federal consistency, that federal activities are consistent with the State's enforceable policies. For instance, one State waived consistency on numerous projects due to a State statute that required the State to issue all State decisions within 90 days or the State's permission is presumed. NOAA identified this as a management program implementation problem and required the State, to ''seek administrative or regulatory mechanisms that ensures consistency is separate from issuance of a permit by default, or ensure consistency is conducted within the 90-day permit review period.'' OCRM/NOAA, Evaluation Findings for the New Jersey Coastal Management Program for the Period from September 1991 through November 1994, at 30 (June 1995). As a result, the State clarified the application of the 90-day statute and took steps to complete its consistency reviews within the 90-day State-imposed period. NOAA followed up on this issue in the State's next evaluation and required the State to provide an explanation of how it is enforcing its program in light of the 90-day State statute. OCRM/NOAA, Evaluation Findings for the New Jersey Coastal Management Program for the Period from December 1994 through November 1997, at 23 (April 1998).

In 1990 Congress added CZMA § 306(d)(14) which requires States to provide for public participation in a State's review of federal consistency determinations and other consistency decisions by a State. Thus, if a State agency receives a consistency determination from a Federal agency, the State cannot simply waive consistency review. The State agency must provide for public comment on a State review to either concur with or object to the determination. In addition, the State must implement its program and cannot do so if it ignores federal activities under CZMA § 307, which will affect the State's coastal uses or resources.

CZMA § 307 also specifies that State's must implement its program through federal consistency. For instance, § 307(c)(3)(A) provides that States ''shall'' establish procedures for public participation and ''shall'' notify Federal agencies and applicants of its concurrence or objection. The ''presumption'' of a State agency's concurrence in the CZMA and NOAA's regulations is not an indication of State agency discretion to be non-responsive. The ''presumption'' of concurrence is to ensure that consistency reviews occur in a timely fashion by providing a penalty to the State for not responding within the statutorily specified time frames. Patterns of non-compliance are remedied through the CZMA § 312 evaluation process, as described above.

NOAA's regulations also contain numerous sections requiring States to implement their federally-approved programs, including federal consistency. For example, 15 CFR section 923.1(b) requires States to comply with CZMA §§ 306 and 307 for program approval; section 923.1(c)(6) requires States to have sufficient means to implement and ensure conformance with their management programs (which includes their federal consistency programs); section 923.1(c)(7) mirrors CZMA § 306(d)(14) requiring public participation in its consistency reviews; sections 923.40(a) and (b) and 923.46 require States to have the organizational structure to implement their programs; section 923.53 requires a State to include in its program ''the procedures it will use to implement the Federal consistency requirements. * * *''; section 923.133(c)(1)(i) requires that for continued management program approval that the State has ''[i]mplemented and enforced the [federally approved program.]'' and, under section 923(c)(2)(i)(C), the State ''is effectively carrying out the provisions of Federal consistency.'' Finally, the criteria for invoking interim sanctions for non-compliance, under sections 923.135(a)(3)(i)(A), (D), and (E), include ''ineffective or inconsistent implementation of legally enforceable policies,'' ''ineffective implementation of Federal consistency authority,'' and ''inadequate opportunity for intergovernmental cooperation and public participation'' including input through CZMA § 306(d)(14) (public input into consistency decisions).

Federal consistency is an integral part of ensuring consistent application of State enforceable policies to all entities, be they public, private, local government or federal, and ensuring adequate implementation of the State's management program, and as such, the statute, the regulations and agency practice require States to meet the CZMA § 307 federal consistency requirements.

As for the comment regarding a process for citizen notification to OCRM of State non-compliance, the CZMA already contains such a process under the section 312 program evaluation process.

Section 930.4 clarifies the use by State agencies of conditional concurrences. Conditions of concurrence should not replace State objections and the identification of alternatives for activities that the State agency finds are inconsistent with its management program. Since conditional concurrences could seriously weaken the State authority granted by the CZMA consistency requirement, this rule only allows conditional concurrences pursuant to the following criteria: (1) Conditions must be based on specific enforceable policies, (2) the applicant must amend its federal application, and (3) the Federal agency approves the application as amended with the State conditions. If all of these requirements are not met, then the conditional concurrence is an objection.

Several Federal agencies, many State agencies and others provided comments either in support of or against this provision. The CZMA does not specifically address conditional concurrences. The CZMA provides predictability and finality by requiring the State agency to concur or object within a prescribed time period. The CZMA does not provide the State agency with the authority to enforce its concurrence (or conditions) beyond the State's consistency decision deadline (*e.g.,* six months for licenses or permits). Once a State agency has concurred, even with conditions, the State agency retains no further consistency authority over the project (unless the project has changed and not begun, *see* proposed supplemental coordination under sections 930.46, 66 and 101).

If a State agency objects, then the State agency retains its authority over the project; the Federal agency cannot issue the license or permit and a Federal agency may not be able to proceed with a Federal agency activity. Some States still prefer conditional concurrences, presumably as a more positive response to an applicant or Federal agency. However, a conditional concurrence may not provide an applicant or a Federal agency with a definitive response within the specified review periods. A conditional concurrence interjects less clarity into the consistency process. Also, when a State agency issues a conditional concurrence the Federal agency may issue the permit or, in the case of a Federal agency activity, proceed with the activity. Thus, issuing an objection and describing

alternatives provides applicants and Federal agencies with a definitive response and retains State agency authority.

A State cannot, through the CZMA, enforce its conditions after it has concurred. The State may request that the Federal agency take enforcement action or may seek a court order against the applicant. The CZMA does not require a Federal agency to adopt a State's conditions of concurrence and OCRM could not require this through regulation. A State condition may also be outside the purview of the Federal agency. The CZMA only requires that the Federal agency shall not grant its approval until the State agency has concurred, concurrence is conclusively presumed, or the Secretary overrides a State agency's objection. Also, if a State agency concurs with conditions and the Federal agency issues its approval consistent with the conditions, but the applicant later does not comply with the conditions, the Federal agency is not required to take an enforcement action. Enforcement action is a purely discretionary action by a Federal agency. *See State of New York* v. *DeLyser,* 759 F. Supp. 982 (W.D.N.Y. 1991).

However, the revised regulations do include the concept that the applicant may modify its federal permit application pursuant to State conditions and if the Federal agency approved the amended application, the Federal agency would be more likely to enforce the State's conditions (since the State conditions would be part of the federal permit). When reviewing activities under CZMA § 307(c)(3)(A), it is the responsibility of the applicant to submit a consistency certification to the State agency and therefore it is also the responsibility of the applicant to address the State's conditions in the application, rather than have the Federal agency granting the permit or license directly impose the conditions. If the applicant did not modify its federal permit application pursuant to the State conditions or the Federal agency did not approve the amended application (with the State conditions), then the concurrence would be deemed an objection. Providing for conditional concurrences in the regulations does not preclude States from issuing an objection. A discussion of whether the Federal agency can enforce the State's conditions should take place during the review period to help determine if a conditional concurrence is the best course of action. States have a choice of choosing either option on a case by case basis.

Under section 930.4, the existing time frames for State agency review of consistency certifications and consistency determinations still apply. If the State has proposed conditions and is awaiting a response from the applicant or Federal agency on proposed conditions and does not hear back within the specified review period, the State agency can still issue an objection. The State agency, applicant and Federal agency can also negotiate a new timeframe for responding to the State's proposed conditions and issuing the conditional concurrence.

Section 930.5 is added to clarify that the mediation and negotiation sections of the regulations do not preclude other State enforcement actions where the State has jurisdiction or believes it is necessary to take enforcement or judicial action. One commenter asked that mediation be mandatary. NOAA disagrees. The use of the remedial action and mediation provisions are not mandated by the statute, the existing regulations or long-standing practice. These provisions are provided in statute and regulation to provide mechanisms to resolve conflict, but are not the only possible remedies, hence the first sentence of this section referring to other possible actions. Certainly, States and Federal agencies are encouraged to attempt to resolve any differences outside of judicial review.

Section 930.6 moves the non-definitional parts of section 930.11(o) (formerly section 930.18) to a section describing the responsibilities of the State agency. Section 930.6(a) acknowledges that a State may have two separate management programs (for distinct regions) and two separate federal consistency agencies. Currently, California has two separate management agencies (the California Coastal Commission and the San Francisco Bay Conservation and Development Commission).

Section 930.6(b) simplifies consistency terminology. At present, different terms are used to describe State responses for Federal agency activities (''agreement or disagreement'') and federal license or permit activities (''objection or concurrence''). Now, a State agency would either object to or concur with a consistency determination or a consistency certification. In response to one commenter, NOAA added public participation language to this subsection. While the public participation requirements are adequately covered in other sections, mention of the requirements here would be appropriate and helpful. Thus, in subsection (b), the phrase ''and, where applicable, the public.'' is added after ''local government agencies.'' In subsection (c), the phrase ''and that applicable public participation requirements are met.'' is added to the end of the first sentence after ''State management program policies.''

Section 930.6(c) is added to clarify the role of the single State agency for coordinating federal actions and the State agency's responsibility to apply all relevant enforceable policies when conducting consistency reviews.

Several State agencies and others supported section 930.6 in their comments, while also recommending changes that were not compatible with the Statute regarding the State agency. NOAA did not make any of the suggested changes for the following reasons. For the reasons Stated above in response to comments on section 930.3, and further elaboration below, the words ''uniformly and comprehensively'' are retained. States are required to implement their federally approved programs and to apply all relevant enforceable policies to a particular federal activity. The CZMA requires compliance with all relevant enforceable policies of a ''management program'' and not a subset thereof. *See e.g.,* CZMA §§ 307(c)(3)(A), 304(12). A major criterion for management program approval is a determination that State agencies responsible for implementing the management program do so in conformance with the policies of the management program. 15 CFR section 923.40(b). *See* also section 923.41(b)(2). Networked management programs must also demonstrate that management program authorities implement the full range of policies. Section 923.43(c). The federal consistency regulations mirror the requirement for the application of enforceable policies in a comprehensive manner. Uniformity is required to ensure that States are not applying policies differently, or in a discriminatory way, among various entities for the same type of project for similar purposes, *e.g.,* holding a Federal agency to a higher standard than a local government or private citizen. Obviously, if similar projects, *e.g.,* shoreline stabilization, are proposed for different purposes, then the States review and decision will vary between the two projects.

Other sections contain information regarding Federal agency responsibilities. This section only applies to State agencies. The CZMA requires that a State have a single State agency for grant administration and management program implementation (including federal consistency). CZMA §§ 306(d)(6) and 307(c)(1)(C). Further,

NOAA's program approval regulations require a single State agency charged with implementing federal consistency, section 923.53(a)(1), as does the existing federal consistency regulation, section 930.18. The need for a designated State consistency agency is to ensure: uniform application of a State's management program policies, efficient coordination of all management program requirements, comprehensive coastal management review, that all relevant enforceable policies are considered for a federal consistency review, that public participation requirements are met, and that there is a single point of contact for Federal agencies and the public to discuss consistency issues. The State agency coordinates consistency reviews, issues concurrences and objections, coordinates with Federal agencies, provides guidance on complying with the consistency requirement, handles appeals to the Secretary and mediation requests, etc. The State agency may rely on the expertise of other State agencies, but other State agencies may not be the designated State agency for consistency reviews, decisions, etc.

Regarding the use of State permits, as discussed above, the State agency must ensure that all applicable enforceable policies are applied to a consistency matter. If described in a State's management program, the issuance of relevant State permits can constitute the State agency's consistency concurrence for federal license or permit activities if the State agency ensures that the State permitting agencies (or the State agency) review individual projects in light of all applicable management program policies. The State agency must monitor such permits issued by another State agency. Monitoring does not mean that the State agency has some sort of overlord role or the ability to overrule another State agency's permit decision (although some State agencies may have this authority). Monitoring means that the State agency is aware of other State agencies' actions that affect the management program, the State agency ensures that other State agencies' decisions are consistent with the management program, and that decisions are being made within the consistency timeframes, etc.

If all management program enforceable policies are contained in State permit standards, then usually the issuance of the relevant State permit(s) will be sufficient for determining consistency. However, there may be cases where a State permit is not required, but the policies contained in a permit program are applicable to the project. In these cases, the State agency must ensure that the activity is consistent with these policies. The State agency must also ensure that public participation requirements are met.

A State agency may develop alternative consistency procedures with Federal agencies. In doing so, the State agency must still be the consistency contact and ultimate decision maker, the State must enforce its CMP, and public participation requirements must be met by the State.

In response to a comment on section 930.6, regarding compliance with State environmental review laws, as discussed above, States are required to apply relevant enforceable policies of the management program. The preparation and use of State environmental review documents, and compliance with such State environmental review laws, is governed by applicable State law, and not the CZMA or NOAA's regulations. What is required, is that the State implement its federally approved management program, as discussed above. Likewise, how the State coordinates with NEPA documents is not proscribed by the CZMA. The CZMA and NEPA are two separate statutes with distinct requirements. Often consistency reviews are coordinated through NEPA documents as a matter of administrative convenience and also to provide environmental information to support a consistency determination. NOAA encourages such practice, as previously discussed in the preamble to the proposed rule under proposed section 930.37.

Subpart B—General Definitions

The definitions have been re-designated to reduce the total number of regulation sections. There is now just a section 930.10 for the index and a section 930.11(a) through (o) for the definitions contained in subpart B.

Section 930.11(d) clarifies that associated facilities are indispensable parts of the proposed federal action. A variant of the addition was previously a comment to the 1979 regulations. 44 Fed. Reg. 37145. This addition ensures that the State agency would have sufficient information to fulfill its coastal planning and management responsibilities, and the proponent of the federal action would not be faced with the situation where there has been receipt of State agency approval regarding one element of the project with later objection to an associated facility which was not earlier reviewed with the remainder of the proposal.

Sections 930.11(b) and (g) define ''any coastal use or resource'' and ''effect on any coastal use or resource,'' respectively. These terms are not intended to alter the statutory requirement which refers to any land or water use or natural resource of the coastal zone. These terms are merely a simpler description of the statutory requirement. The term ''minerals'' has been added to include both surface and subsurface mineral resources. Aesthetics and scenic qualities are not natural resources, but are enjoyment or use of natural resources. These concepts have been added to the definition of coastal use. Land has been added to natural resource. A sentence has also been added to include coastal uses and resources detailed in a management program. Resource creation or restoration projects has been added as a coastal use. This includes tidal and nontidal restoration and creation projects. Air and invertebrates have been added as natural resources. Since historic and cultural resources are important coastal resources under the CZMA (*see* §§ 302(e), 303(2) and 303(2)(F)), the protection of historic and cultural resources of the coastal zone is included in the examples of coastal uses.

Several States and environmental groups commented that these sections are the core of the 1990 amendments and fully supported these sections. Several commenters wanted additions or deletions to these sections and for NOAA to define ''reasonably foreseeable'' in subsection (g). NOAA did not make changes to these sections based on these comments. The definition for coastal uses and resources is derived primarily from CZMA § 304 (coastal uses of national significance are defined in CZMA § 304(2)). Not all coastal uses or resources can be added. The list is not exclusive, but is meant to highlight the more common uses and resources. The list includes coastal resources of national significance, which include beaches and barrier islands, as defined in CZMA § 304(2). The definition also uses the term ''land'' in its description of natural resources, which includes barrier islands, spits, beaches and bluffs. Therefore, NOAA disagrees that it is necessary to add these terms to the definition of coastal resource. Biological, hydrological, and geophysical systems are not resources, but processes that affect resources. The resources that are affected by these processes are included in the definition. It is also not clear why just these processes are proposed to be listed. Such a list would imply that other processes are not included. These three terms have not been added.

The definition of coastal effects is not over broad, but is consistent with the CZMA, legislative history and CEQ/

NEPA definitions of cumulative and secondary effects. The changes to the CZMA in 1990 specifically removed application of federal consistency to ''direct'' effects (and likewise ''significant'' or ''substantial'' effects). *See also* response to comments regarding section 930.31(a), and the preamble to this rule. Explanation of the change in 1990 is contained in the Conference Report. The ''effects'' language is taken from the Conference Report. The Conference Report is persuasive authority for interpreting the CZMA. The Conference Report states that coastal effects are to be construed broadly and include both direct effects which result from the activity and occur at the same time and place, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. The Conference Report makes it clear that the test for triggering consistency is not whether the effect is significant or substantial, but whether it is reasonably foreseeable. NOAA could not put back in (or retain what is currently in) regulation that which Congress specifically removed in 1990.

Whether consistency applies is not dependent on the type of federal activity, but on reasonably foreseeable coastal effects. For example, a planning document or regulation prepared by a Federal agency would be subject to the federal consistency requirement if coastal effects from those activities are reasonably foreseeable.

Again, the application of consistency is not limited by the geographic location of a federal action; consistency applies if there are reasonably foreseeable coastal effects resulting from the activity. A federal action occurring outside the coastal zone may cause effects felt within the coastal zone (regardless of the location of the affected coastal use or resource). For example, a State's fishing or whale watching industry (which are coastal uses) could be affected by federal actions occurring outside the coastal zone. Thus, the effect on a resource or use while that resource or use is outside of the coastal zone could result in effects felt within the coastal zone. However, it is possible that a federal action could temporarily affect a coastal resource while that resource is outside of the coastal zone, *e.g.*, temporary harassment of a marine mammal, such that resource impacts are not felt within the coastal zone. As stated above, the coastal effects test is a fact-specific inquiry. NOAA is not further defining ''reasonably foreseeable.'' Congress envisioned that Federal-State coordination through consistency would be interactive. Thus, the application of consistency, the varied State management programs, the analysis of effects, and the case-by-case nature of federal consistency precludes fast and hard definitions of effects and what is reasonably foreseeable.

The ''substantial'' language in sections 930.46 and 930.66 refer to supplemental coordination for proposed activities. The intent in these sections was to address situations where coastal effects have substantially changed, not to define the scope of effects to trigger initial State agency review.

The proposed definition includes cumulative and secondary effects as part of indirect effects via the following language: ''indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.'' The definition goes on to State that ''Indirect effects resulting from incremental impact of the federal action when added to other past, present and reasonably foreseeable actions, regardless of what person(s) undertake such actions.'' This language is consistent with the Council on Environmental Quality's definition of cumulative effects. 40 CFR section 1508.7.

The so-called ''chain of events'' concept was already captured in the proposed rule under section 930.31, which is derived from legislative history discussing the scope of consistency.

Section 930.11(h) adds a definition of enforceable policy by reference to CZMA § 304(6a), and clarifies that an enforceable policy must be sufficiently comprehensive and specific to control coastal uses while not necessarily inflexibly committing the State to a particular path. *See American Petroleum Institute* v. *Knecht*, 456 F. Supp. 889, 919 (C.D. Cal. 1978), *aff'd*, 609 F.2d 1306 (9th Cir. 1979); 15 CFR section 923.40(a); Conference Report at 972. One Federal agency, three States and the environmental groups had various comments on this definition. These comments included: the definition is too broad, enforceable policies should include federal law, the section should require compliance with State environmental review requirements, and that not all policies should have to be formally incorporated into federally approved management programs.

NOAA did not change the definition based on these comments. Changing the scope of the definition of enforceable policies would be inconsistent with the CZMA. Under CZMA § 307(c), Federal agencies are required to submit a consistency determination to the State agency if it determines that there are reasonably foreseeable effects. The consistency determination should include an evaluation of the proposed activity in light of the applicable enforceable policies in the State's Coastal Management Program (CMP). The State has the authority to then review this consistency determination and decide whether it agrees with it, including the Federal agency's interpretation of the State's enforceable policies. If the State disagrees with the consistency determination, then it must describe how the activity is inconsistent with the enforceable CMP policies and alternatives (if they exist) that would allow the activity to be conducted in a manner consistent to the maximum extent practicable. If agreement cannot be reached between the State and Federal agencies, the Federal agency may still proceed with the activity, as long as it clearly describes to the State the specific legal authority which limits the Federal agency's discretion to comply with the State CMP's enforceable policies.

The regulations encourage early discussions between the State and the Federal agency over the meaning of the State's enforceable policies. For instance, section 930.34 encourages early consultation between Federal and State agencies to obtain the State views and assistance regarding the means for determining that the proposed activity will be conducted in a manner consistent to the maximum extent practicable with the State's CMP. In addition, the definition envisions that discussions between the State and Federal agencies may be necessary in order to determine the consistency of the activity with the State's enforceable policies.

CZMA § 307(e) requires that States with approved CMPs must submit changes to the CMP for approval by OCRM before they can be considered enforceable policies under the CMP. Therefore, States cannot use enforceable policies that are not part of the State's CMP for review of activities under federal consistency. States are encouraged to send in proposed changes to their CMPs as soon as possible for review by OCRM.

The CZMA does not provide for the inclusion of federal laws into State CMPs, but rather a listing of the State enforceable policies (*e.g.*, laws, constitutional provisions, regulations and judicial decisions). Federal agencies or applicants for federal permits undertaking activities that have reasonably foreseeable coastal effects must consider the enforceable policies of the State's CMP (*see* CZMA

§§ 307(c)(1)(A) and (3)(A)). This does not preclude the need for these activities to comply with relevant federal laws, but the CZMA does not grant authority to States to consider federal laws as State CMP enforceable policies when reviewing Federal agency activities or federal license or permit activities.

In addition, in order for a State law to be used under federal consistency, it must be a part of the State's approved CMP. Under CZMA § 306(d)(2)(D), the State must include a list of enforceable policies in its coastal management program. Under CZMA § 306(e)(1), it is the State's responsibility to request that OCRM consider including new or revised enforceable policies for inclusion in the State CMP. Therefore, in order for a State to add an enforceable policy to its CMP for the purposes of federal consistency, such as the California Environmental Quality Act (CEQA), the State must make that request to OCRM. Also, whether a Federal agency must be fully consistent with CEQA would depend on whether Federal law precluded full consistency, pursuant to the section 930.32 consistent to the maximum extent practicable standard.

Management measures does not refer to the ''(g)'' guidance for Coastal Nonpoint Programs. It is a term borrowed from the Conference Report and *American Petroleum Institute* v. *Knecht* that describes reasonable State interpretations of its enforceable policies.

Subpart C—Consistency for Federal Agency Activities

Throughout the regulations the phrase ''directly affecting the coastal zone'' has been changed to read ''affecting any coastal use or resource.'' This codifies changes made to the CZMA by CZARA and includes reasonably foreseeable effects on any land or water use or natural resource of the coastal zone.

In section 930.30 NOAA deleted ''conducted or supported'' to conform this section with changes made by CZARA. In addition the title of subpart C and throughout subpart C, the term ''Federal activity'' is changed to ''Federal agency activity'' to avoid confusion with federal activities under subparts D, E, and F. The phrase Federal agency activity is taken directly from the CZMA.

NOAA amended section 930.31(a) to further describe the scope of the federal consistency effects test by clarifying the term ''functions.'' This language is derived from the CZMA's legislative history. Three Federal agencies commented that the definition is too broad and should not include certain federal activities. NOAA disagrees. Federal agency activities are not defined by the type of activity, but rather, whether the activity will have reasonably foreseeable coastal effects. Despite this clear statutory and legislative intent, there have been questions over the years as to whether a particular Federal agency action is subject to the consistency requirement. These questions have primarily arisen for rulemaking and planning activities, and that is why these activities are included in the rule. Clearly, these are Federal agency functions. A rulemaking by NMFS that limits the catch of a species of fish is a rulemaking that affects a State's fishing industry, which is an effect on a coastal use. A rulemaking by the Corps to authorize activities in navigable waters and wetlands under its Nationwide Permit Program will allow activities that affect coastal resources. Likewise, if a Federal agency takes an action that interferes with a coastal use, an ''exclusion of uses,'' *e.g.*, prohibiting public access or fishing, that is a Federal agency activity that has a coastal effect. A Federal agency activity that initiates a series of events where coastal effects are reasonably foreseeable, is subject to consistency. Congress emphasized this as far back as 1980, H.R. Rep. No. 96–1012, 96th Cong., 2d Sess. 34 (May 16, 1980), and re-emphasized the concept in 1990 when it declared that consistency applies to Federal agency activities with cumulative and secondary direct and indirect effects. Conference Report at 970.

The question at hand is whether such actions will have reasonably foreseeable coastal effects. If so, then consistency applies. If not, then consistency does not apply. (Although the Federal agency may have to provide the State agency with a ''negative determination'' if: (1) The activity is listed in the management program, (2) the State agency notifies the Federal agency that the State believes that an unlisted activity will have coastal effects, (3) the Federal agency provided consistency determinations for similar activities in the past, or (4) the Federal agency conducted a thorough assessment and developed initial findings on coastal effects.) The question of coastal effects must be made on a case-by-case basis, except where States and Federal agencies have agreed that a class of activities will not have coastal effects (or will have de minimis effects as provided for in section 930.33(a)(3)), and are thus not subject to consistency. Thus, if a Federal agency does not believe that a particular rulemaking or plan will have reasonably foreseeable coastal effects, then the Federal agency does not have to provide a consistency determination.

As to the comments regarding the CZMA and the Outer Continental Shelf Lands Act (''OCSLA''), the Comment makes NOAA's case. The comment talks about activities that do not affect the coastal zone. If that is the case, then the Federal agency does not need to provide a consistency determination and may have to provide a negative determination. As for the matter of 5-year OCS plans by Interior, the position of the United States was made clear by the U.S. Department of Justice by its Office of Legal Counsel (Justice) in a letter from Leon Ulman, Deputy Assistant Attorney General, Office of Legal Counsel, Justice, to Mr. C.L. Haslam, General Counsel, Department of Commerce, and Mr. Leo M. Krulitz, Solicitor, Department of the Interior, dated April 20, 1979 [Justice Opinion]. In addition, the clear language of the 1990 amendments to the CZMA, and Congressional intent as described in the Conference Report for the 1990 amendments, 5-year OCS plans are subject to the CZMA federal consistency effects test, 5-year OCS plans are not exempted from the consistency requirement as a matter of law or policy, and there are efficient ways to address consistency and 5-year OCS plans if Interior determines that coastal effects are reasonably foreseeable. *See* letter from NOAA's Office of Ocean and Coastal Resource Management to Interior's Minerals Management Service, dated August 7, 1996. If Interior determines that coastal effects from the 5-year OCS plans are *not* reasonably foreseeable, then Interior should issue a negative determination.

Section 18 of the OCSLA requires that procedures be established for consideration of State coastal management programs. Interior asserts that this section and the 1978 amendments to the OCSLA deliberately reject the consistency requirement in favor of providing for consideration of State coastal management programs. NOAA believes that this interpretation of the OCSLA as applied to the CZMA is incorrect for four reasons: (1) The plain language of the conference report (and other legislative history) for the 1978 amendments to the OCSLA does not reject the consistency requirement, (2) the 1978 amendments to the OCSLA added clear language that the consistency requirement was not affected, (3) in 1979 Justice determined that pre-lease sale activities are subject to the consistency effects test, and (4)

even if the intent of the 1978 amendments to the OCSLA was to reject the consistency requirement, the 1990 amendments to the CZMA clarifies that all federal activities are subject to the consistency requirement if there are reasonably foreseeable coastal effects. Further, consideration of management program concerns to the maximum extent practicable at the 5-year OCS plan stage lays a foundation for leasing activities that will also be consistent to the maximum extent practicable.

When the CZMA and the OCSLA are read together, the OCSLA requirement for ''consideration'' of State coastal management programs is consistent with the CZMA requirement that Federal agencies conduct their activities consistent with State coastal management programs. If the intent of Congress was to repeal the CZMA federal consistency requirement for pre-lease sale activities then it would have specifically said so. As Justice stated:

> [T]he intention of the legislation to repeal must be clear and manifest; that every attempt must be made to reconcile the statutes involved; and that a repeal by implication will be found only where there is a ''positive repugnancy'' between the statutes in question. *Morton* v. *Mancari,* 417 U.S. 535, 549–551 (1974); *Borden* v. *United States,* 308 U.S. 188, 198–199 (1939).

Justice Opinion at 10. In this case, requiring Interior to conduct an effects test, and to provide a State with a consistency determination or a negative determination, where appropriate, does not interfere with Interior's pre-lease responsibility under the OCSLA.

The 1978 OCSLA conference report contains two references to the CZMA. Under ''Considerations,'' page 103, the report states:

> The House amendment includes among the consideration for a leasing program the policies and plans under the [CZMA]. The Senate bill contains no comparable provision. The conference report follows the House amendment and contains no such specific provision as it is included within the consideration of ''laws, goals, and policies of affected States.''

This discussion in the conference report and the corresponding section of the OCSLA specifically require Interior to address State coastal management program requirements and says nothing about rejecting the CZMA federal consistency requirements. The second reference to the CZMA in the conference report is on page 105, and it States:

> Both versions provide for regulations as to coastal zone management applicability. The House amendment provides for regulations involving ''consideration'' of a program ''being developed or administered'' pursuant to section 305 or 306, respectively, of the [CZMA]. The Senate bill provides for ''coordination'' of the program with the management program being developed and also for ''consistency'' to the extent practicable with the management program. The conference report is the same as the House amendment. The Secretary is to establish procedures by regulation for consideration of State coastal zone management programs.

While the Senate version was more specific as to the federal consistency requirement, the House version does not reject the consistency requirement.

Section 608(a) of the 1978 OCSLA amendments expressly provides that: ''[E]xcept as otherwise *expressly* provided in this Act, nothing in this Act shall be construed to modify, or repeal any provision in the CZMA'' (emphasis added). This language was also included in the section-by-section analysis of section 19 in the House report. Justice Opinion at 12, *citing,* H. Rept. 5–590, at 153, n.52. No section of the OCSLA expressly repeals the CZMA and the sections on pre-lease sale activities do not expressly modify the CZMA. Thus, there is no basis to reject the CZMA consistency requirement based on the conference report language.

Justice also found, after the 1978 amendments, ''that neither the [CZMA] Amendments of 1976 nor the [OCSLA] Amendments of 1978 affect the application of § 307(c)(1) to [OCSLA] pre-leasing activities.'' Justice Opinion at 2. Justice also reviewed the legislative history and found that it did not exempt pre-lease sale activities from consistency. *Id.* at 12. Justice found that pre-lease sale activities are subject to consistency effects test just like any other federal function. *Id.* at 2.

Lastly, the 1990 amendments clarified that any federal activity is subject to the consistency requirement if coastal effects are reasonably foreseeable. The 1990 amendments to the CZMA also specifically rejected any categorical exemptions. The only test for the application of consistency is the effects test. Thus, even if, arguendo, pre-lease sale activities were exempted, pursuant to the OCSLA amendments of 1978, from consistency, they are now, pursuant to the 1990 CZMA amendments, clearly subject to the consistency requirement.

Applying the consistency requirement to the 5-year OCS program is sound policy for several reasons. First, the CZMA consistent to the maximum extent practicable standard is not onerous (especially at an early stage of OCS development). Second, the 5-year OCS plan offers a good opportunity, early in the OCS process, to attempt to resolve State concerns. Addressing consistency at the 5-year OCS plan stage allows States to identify coastal concerns, such as the location of future lease sales, and reduces potential conflict. Third, Interior NEPA documents have determined that the 5-year plan is a major federal action with expected environmental effects which present an excellent point to determine consistency with management programs.

In 1984, the Supreme Court held that OCS oil and gas lease sales by MMS were not activities subject to the CZMA consistency requirement as the lease sales did not directly affect the coastal zone. *Secretary of the Interior* v. *California,* 464 U.S. 312 (1984). Despite NOAA regulations and Justice opinions indicating that the ruling was limited to oil and gas lease sales, other Federal agencies relied on *Secretary of the Interior* to argue that their activities were not subject to the federal consistency requirement. In amending the CZMA in 1990, Congress overturned the effect of the decision in *Secretary of the Interior* and made clear that OCS oil and gas lease sales are subject to the consistency requirement. Conference Report at 970–72. Congress also intended this change to apply to other federal activities (in and outside the coastal zone) in addition to OCS oil and gas lease sales. The remainder of the consistency discussion in the Conference Report makes this clear as does similar discussion in the Congressional Record, 136 Cong. Rec. H 8068 (Sep. 26, 1990) [hereinafter ''Congressional Record''] (incorporated into the Conference Report, *see* Conference Report at 975). The Conference Report clearly states that changes to the consistency section clarify that any federal activity is subject to the consistency requirement (regardless of location) if coastal effects are reasonably likely, and that there are no categorical exemptions. Conference Report at 970. The discussion in the Conference Report on whether to list other federal activities that are subject to the consistency requirement, e.g., activities under the Ocean Dumping Act, further clarifies that no federal activities are categorically exempt and that the determination of whether consistency applies is a case-by-case analysis based on reasonably likely effects on any coastal use or resource. *See* Conference Report at 971.

The Congressional Record sheds further light on the intent and the scope of Congress' rejection of *Secretary of the Interior.* Congress noted that since the Court's decision, ''other federal agencies have broadly interpreted the case in a manner that would exclude their

activities from [consistency],'' and that ''[t]he federal consistency provisions are at the heart of the Nation's coastal zone management program and it has become increasingly clear that the combination of Supreme Court dicta and federal agency belligerence are a troublesome combination.'' Congressional Record at H 8072–73. Congress not only rejected *Secretary of the Interior,* but eliminated the '' 'shadow effect' of the Court's decision (i.e., its potentially erosive effect on the application of the federal consistency requirements to other federal agency activities) * * * and also to dispel any doubt as to the applicability of this requirement to all federal agency activities that meet the standard [the effects test] for review.'' *Id.* at H 8076.

Within the existing regulations and the proposed rule are means for Interior to provide consistency determinations, where applicable, in a reasonable and efficient manner. Briefly, the regulations would allow Interior to use the effects test to determine whether a consistency determination is required; or could note the lack of information at that 5-year OCS plan stage; and could provide a consistency determination to more than one State under the new section for determinations for activities that are national in scope or affect more than one State; and, finally, States and Interior could agree that the 5-year plan is too early in the OCSLA process, and that consistency determinations may be provided at later stages.

Section 930.31(b). One Federal agency commented that a ''development project'' should include a characteristic from each of the two groups of descriptors. The ''and'' in this section has always been interpreted as including at least one characteristic from each of the two groups. However, to make it clearer, the word ''includes'' has been inserted after ''and''.

Section 930.31(c) is added to clarify that CZMA § 307(c)(1) is a residual category. Federal actions that do not fall into subparts D, E, or F are Federal agency activities. CZMA § 307(c)(1)(A); *see* 44 Fed. Reg. 37146. One Federal agency commented that NOAA should state that fisheries licensing programs are subject to subpart C. No change is required for this section. A fisheries licensing program would continue to be under subpart C. An individual license to an applicant to conduct an activity would be under subpart D. No change is needed to continue the status quo.

Section 930.31(d) addresses the hybrid nature of general permit programs developed by Federal agencies. This occurs when a Federal agency proposes to replace the need for an applicant to obtain an individual permit with a general set of requirements which, if met by the applicant, would allow the applicant to proceed with the activity without a case-by-case approval by the Federal agency. Two examples are the Corps' Nation-wide Permit (NWP) program under the Clean Water Act § 404 and the Environmental Protection Agency's (EPA's) general National Pollutant Discharge Elimination System (NPDES) permits for discharges from OCS oil and gas facilities. The development of the general permit program is best thought of as a Federal agency activity. Even though a general permit will authorize license or permit activities, the development of the federal requirements is an action by a Federal agency, not an applicant. Moreover, there is not a discreet federal or license permit activity to review and there is not an applicant. Neither the statute nor the regulations contemplated the hybrid nature of general permits. CZMA § 307(c)(1)(A) does provide that a Federal agency is subject to § 307(c)(1) unless it is subject to paragraph (2) or (3)(license or permit activities). However, this does not resolve the matter since § 307(c)(3) does not imply or anticipate a situation where a Federal agency is an applicant for its own approval, and for general permits the Federal agency is not actually undertaking the license or permit activity covered by the general permit. Federal agencies may of course choose to subject their general permit programs to CZMA § 307(c)(3)(A).

Several commenters had various suggested changes to section 930.21(d). NOAA made corresponding changes to the rule. NOAA agrees that subpart C applies to general permit programs and not case-by-case approvals to non-Federal applicants. This was the intent of the section and clarifying language has been added. ''Should'' is changed to ''shall'' as the intent was to remove the need for case-by-case reviews where the State agency concurs with the general permit program. Language was added to address the situation where a Federal agency subjects itself to subpart D. Some Federal agencies want to subject their general permit programs to the requirements of subpart D. This gives States greater leverage over the Federal action. If Federal agencies want to do that, NOAA wants to provide them that flexibility. NOAA has added clarifying language regarding the need for State agency concurrence for an individual general permit, where the State objected to the general permit program.

Even though general permit programs are for activities that would normally be subject to subpart D, the consistent to the maximum extent practicable standard still applies since the general permit program is covered under subpart C. It may be possible, although unlikely, that a federal statute requires a Federal agency to conduct a program in such a manner that would not be fully consistent with a State's enforceable policies. The regulations already contain numerous instructions to Federal agencies regarding notice to State agencies and the content of consistency determinations.

Section 930.31(e) is added in response to a comment from a State to clarify existing NOAA interpretation that a modification to a Federal agency activity that has coastal effects and has not been subject to State agency consistency review, is a Federal agency activity subject to the consistency requirement.

NOAA amended section 930.32 to clarify the consistent to the maximum extent practicable standard. NOAA divided section 930.32(a) into 3 subsections. Subsections (1) and (2) are the existing regulations and subsection (3) is new. Minor changes were made to section 930.32(a)(1) and the last sentence in (a)(1) is moved to the end of (a)(2). These changes are made for clarity and brevity; there are no substantive changes in subsections (a)(1) and (2). The term ''discretion'' as included in the existing regulations and retained in the revised regulations means that the more discretion a Federal agency has under its legal requirements, the more the Federal agency must be consistent with the management program's enforceable policies. In subsection (a)(2), NOAA deleted the term ''supplemental'' since the CZMA requires that a management program's enforceable policies are requirements, not supplemental requirements. Also, supplemental is somewhat redundant with the rest of the sentence.

Two Federal agencies commented that the consistent to the maximum extent practicable standard was too restrictive and one State agency commented that ''legislative history'' is not federal legal authority. The final, proposed and pre-existing regulations all correctly describe ''consistent to the maximum extent practicable'' for purposes of the CZMA. Congress clearly intended Federal agencies to be consistent with State management programs (*see e.g.,* H.R. Rep. No. 92–1049, 94th Cong., 2d Sess. 18–19), the regulations have reflected this for over 20 years, courts have upheld the definition (*see e.g., California Coastal Commission* v. *Navy,* No. 97cv2219 (S.D. Cal. Jan. 28, 1998),

and Congress specifically endorsed the definition in the 1990 amendments in the Conference Report.

Section 930.32(a)(3) clarifies the effect of federal appropriations law on the consistent to the maximum extent practicable standard. A lack of funding does not excuse a Federal agency from having to conduct a federal activity in a manner that is consistent with management program enforceable policies. Management program enforceable policies are, in most cases, in place long before the planning of many federal projects and in advance of budgeting for annual appropriations. A Federal agency cannot avoid any State requirement that it finds burdensome simply by not funding the required action. Advance planning and early coordination can help alleviate these concerns. If Federal agencies know what the State's enforceable policies are then costs can be factored into an agency's planning. Also, just as Federal agencies cannot avoid other federal and State law requirements (e.g., under the Clean Water or Air Acts, NEPA) due to funding constraints, they cannot avoid management program enforceable policies. State enforceable policies are developed pursuant to the CZMA, approved by the Federal Government, and applicable to Federal agencies through the CZMA federal consistency requirement.

One Federal agency commented that section 930.32(a)(3) overturns long held views of Federal agencies and NOAA or preempts the Federal budgetary process. Another Federal agency, while acknowledging that a lack of funding does not automatically render an action not practicable, it may not always be possible to plan for State requirements in advance. Several States commented that NOAA should require Federal agencies to plan for State policies and that the word ''only'' should be inserted. One commenter wanted NOAA to rewrite the section, and the environmental groups commented that there were contradictory statements in the section. The only modification NOAA has made is to remove the word ''discretionary'' as it is somewhat redundant and limiting. In response to the comments, it is NOAA's understanding that the ''long held views'' of the Federal agencies, with the possible exception of one or two offices within one or two Federal agencies, are compatible and in agreement with this section. Moreover, the changes made by Congress to the CZMA in 1990 carry more weight than a Federal agency's ''view.'' NOAA must base its regulations on the statute. In this case, the definition of ''consistent to the maximum extent practicable'' is well-established and recognized by Federal agencies and was specifically endorsed in the 1990 CZMA changes. *See* Conference Report at 972. This section is also consistent with previous statements made by the Department of Commerce's General Counsel. The letter that the commenter refers to was a comment submitted to the Corps on the Corps' proposed regulations. *See* letter from Douglas A. Riggs, General Counsel, Department of Commerce, to the Corps (Aug. 20, 1986) (Riggs letter). The comments provided to the Corps in the Riggs letter recommend that the Corps use NOAA's regulations to define coordination between the Corps' program and the coastal States and discusses ''consistent to the maximum extent practicable'' consistent with NOAA's existing and proposed regulations. The reference to ''appropriations'' in the Riggs letter is ambiguous at best, but, if interpreted with the statute and NOAA's regulations at the time, merely mean that if something in appropriations law prohibits full consistency, then the Corps is consistent to the maximum extent practicable. Any ambiguities in the Riggs letter were replaced by the clear language of the CZMA as amended in 1990. Problems arise if Federal agencies use dollar amounts specified in appropriations law as part of the consistent to the maximum extent practicable equation. These problems are: (1) The CZMA Presidential exemption in CZMA § 307(c)(1)(B) is the only express exemption due to lack of appropriation amounts (even then, the appropriations needed for full consistency would have to be specifically requested by the President as part of the budgetary process, and Congressional appropriations would have to specifically exclude from funding the cost of being fully consistent); (2) appropriations laws often provide little guidance as to how funds are to be used; and (3) the CZMA mandates that State enforceable policies are substantive requirements. Sometimes appropriations are insufficient due to inadequate planning, failure to include the cost of CZMA compliance in a budget request, or insufficient funds from other sources. The solution is to ensure that Federal agencies plan and budget for full consistency early in the scoping process for an activity and to include specific costs for full consistency in their budgetary process.

NOAA believes the meaning of section 930.32(a)(3) is clear and has not added the word ''only.'' NOAA has not replaced ''should'' with ''shall'' when discussing the admonition for Federal agencies to plan and budget for the costs of being consistent with State policies as there is no basis in the statute for NOAA to impose such a directive. The statute requires the Federal agency to be consistent to the maximum extent practicable with enforceable policies. How a Federal agency does this and how it funds such consistency is determined by other Federal law or each agency's planning, budgetary and policy-making processes. The language of this section is clear regarding appropriations and consistency. There is no contradiction as the section merely acknowledges that appropriation laws are Federal law which may contain specific legal prohibitions to full consistency. Absent such specific prohibitions, the Presidential exemption is the only provision which may be used by a Federal agency to make a finding that a lack of funds prohibits full consistency.

Section 930.32(b) clarifies that in an emergency, or other similar unforeseen circumstance, the Federal agency must still adhere to the consistency requirements, to the extent that exigent circumstances allow. For example, a Federal agency, responding to an emergency, must still provide a consistency determination to the State agency, if time allows. If the time frame for responding to an emergency is too short for a consistency determination, the Federal agency should coordinate with the State agency to the extent possible. To avoid uncertainty in these instances, the Federal agency and State agency may mutually agree to emergency response planning prior to an actual emergency, or develop expedited procedures or a general review for reasonably foreseeable emergency situations and activities. The phrase ''exigent circumstances'' is used since many agencies respond to emergencies, but they may not be mandated by law to respond within a certain time frame. Thus, their rapid response may be determined by the emergency nature of the activity (*i.e.,* the exigent circumstances), not their discretionary authority. Several State agencies commented that this section needs to be clearer regarding Federal agency responsibilities to ensure that Federal agencies deviate only when there is a true emergency and that even when there is an emergency, the Federal agency still complies with the consistency requirements if the action continues after the emergency is past. NOAA agrees that this section needed revision to better reflect the

''emergency'' nature of deviating from consistency. The consistency requirements should not be set aside unless absolutely necessary and if an emergency arises, then consistency should be adhered to once the emergency passes if there is still an activity occurring. NOAA has made corresponding changes to this section.

Section 930.32(c) addresses national security activities that are ''classified.'' The 1990 changes to the CZMA make it clear that all federal activities are subject to the consistency requirement. Thus, a classified activity that will affect coastal uses or resources is subject to the consistency requirement unless exempted by the President under CZMA § 307(c)(1)(B)). However, under the consistent to the maximum extent practicable standard, the Federal agency need only provide project information that it is legally permitted to release. Despite the fact that a Federal agency may not be able to disclose certain project information, the Federal agency must still conduct the classified activity consistent to the maximum extent practicable with the management program. Concerned management programs may want to consider developing general consistency agreements with relevant Federal agencies for classified activities. The definition of ''classified'' is adopted from the Freedom of Information Act. Information concerning the national defense or foreign policy is protected from disclosure provided it has been properly classified in accordance with the substantive and procedural requirements of an executive order. As of October 14, 1995, the executive order in effect is E.O. 12,958, 3 CFR 333, reprinted in 50 U.S.C. § 435 note (1994). Generally, it is preferable, however, not to identify the particular executive order in the regulations, because it may be supplanted by a new order and courts have held that agencies should always apply the executive order in effect at the time the classified determination is made—*i.e.,* an agency does not have to go back through all of its old information and reclassify it pursuant to the latest executive order. One commenter said the definition of classified activity was too broad and that the rule should encourage the use of qualified third parties to review classified materials. NOAA does not agree that the language of the subsection is over broad. The subsection adequately instructs Federal agencies to withhold only classified material. NOAA agrees that using a qualified third party to review classified material is appropriate where both the Federal agency and State agency agree.

Section 930.33(a)(1) clarifies that effects on any coastal use or resource are not limited to environmental effects and that a review of relevant management program enforceable policies is necessary to determine whether the activity will affect any coastal use or resource. Two commenters recommended that NOAA add language that an activity has coastal effects if it initiates actions leading to effects (so-called ''chain of events'' language) and that NOAA add language regarding State-Federal consultation. NOAA has added the chain of events language from section 930.31(a) to this section as well. The sentence regarding consultation with State agencies is not added as the regulations contain sufficient direction for Federal agencies to consult with State agencies.

Section 930.33(a)(2) clarifies when federal consistency does not apply to a Federal agency activity. If there are no effects on any coastal use or resource and a negative determination is not required, then the Federal agency need not provide anything to the State. Several States and the environmental groups commented that Federal agencies should consult with State agencies even when there are no coastal effects or to provide a negative determination. NOAA added the phrase ''Federal agency activity'' to distinguish this section from the need to consult with State agencies for development projects. The other comments are not accepted, because the intent of this section is to clarify when Federal agencies must consult with State agencies. The CZMA does not require Federal agencies to coordinate with State agencies for activities that do not have coastal effects. To require coordination for such activities would be contrary to the CZMA, unreasonable and place an enormous burden on the Federal agencies with little or no benefit to management programs. NOAA also believes it would also be unwise to ''encourage'' such unnecessary coordination. The regulations do require that a Federal agency provide a State agency with a negative determination in certain circumstances, and this has been retained in the revised regulations.

Section 930.33(a)(3) provides a process whereby State agencies and Federal agencies can more efficiently address ''*de minimis*'' activities. *De minimis* activities cannot be unilaterally excluded from the Federal consistency requirement. Two Federal agencies commented that this section will be very useful, but suggested NOAA use a different word than ''trifling.'' Another Federal agency commented that *de minimis* activities should be excluded, by rule, from the consistency requirement. State commenters supported the section with suggested wording changes. One environmental group commented that *de minimis* activities should only be excluded after opportunity for public comment. Other environmental groups opposed this section as contrary to Congressional intent that no activities be excluded that have coastal effects. These groups also asked that public comment be provided for if the section were retained.

NOAA has replaced the word ''trifling'' with ''insignificant'' and has also clarified that *de minimis* applies to activities with insignificant direct and indirect coastal effects. While the use of this section will be limited to activities with little or no coastal effect, NOAA agrees that States need to provide for public input before excluding such activities. NOAA believes that the CZMA provides States with the flexibility to exclude such activities with insignificant effects, by agreement with Federal agencies and with opportunity for public input. NOAA intends to foster efficient and effective administrative mechanisms. This section allows States to do that.

If Federal agencies cannot unilaterally exclude their activities from consistency, neither can NOAA on its own, by rule, exclude activities. The 1990 amendments to the CZMA clearly require that federal actions are subject to consistency if they affect coastal uses or resources. There is no distinction as to the magnitude of effects. Seemingly minor effects may have substantial coastal effects when cumulative and secondary effects are considered. Congress specifically recognized this in 1990. Conference Report at 970–72. There are several problems with listing or mandating a *de minimis* exception, as suggested by the comment. As the court noted in *Environmental Defense Fund* v. *EPA*, 82 F.3d 451 (D.C. Cir. 1996), *modified* by 92 F.3d 1209 (D.C. Cir. 1996), ''[t]he ability to create a *de minimis* exemption is not an ability to depart from the statute, but rather a tool to be used in implementing the legislative design. * * * Of course, * * * a *de minimis* exemption cannot stand if it is contrary to the express terms of the statute.'' The express terms of the CZMA are that consistency applies to ''each'' federal activity ''affecting'' ''any'' coastal use or resource. Neither the CZMA nor the Conference Report specifically authorize a *de minimis* exception. Conference Report at 970–972. Rather, the Conference Report provides persuasive

authority regarding legislative design: ''effects'' are to be construed broadly and include reasonably foreseeable direct and indirect effects. Further, Congress amended the CZMA in 1990 to specifically guard against Federal agencies exempting their activities. Thus, any attempt to address *de minimis* activities must be done cautiously and only with the concurrence of the State agency. Finally, many States are concerned with the cumulative effect of seemingly *de minimis* activities. States are not only concerned with resource protection issues, but ensuring that their efforts to address *de minimis* activities through other planning and permitting activities are not compromised by exempting other *de minimis* activities.

The CZMA, however, allows States and Federal agencies to agree to address *de minimis* activities in a flexible manner. The proposed revisions do not provide detailed definitions of *de minimis* activities. Rather, OCRM proposes some general guidelines and then leaves it to the Federal agency and States, with opportunity for public comment, to agree as to what is *de minimis*.

Section 930.33(a)(4) allows State agencies and Federal agencies to mutually agree to exclude environmentally beneficial activities from further State agency review. Two commenters said that environmentally beneficial activities should not be excluded from review, that public comment is needed and that the section should be deleted. NOAA believes that States and Federal agencies should have the flexibility to agree to exclude activities from consistency review that will be beneficial to the environment. This is consistent with the CZMA's directives regarding administrative efficiency and effectiveness. *See* CZMA § 303(2)(G), (H) and (I). NOAA has clarified that environmentally beneficial refers to the protection and restoration of natural resources of the coastal zone. NOAA also recognizes the importance of such decisions to the public and has specifically required that any such exclusion requires public notice and comment pursuant to CZMA § 306(d)(14).

Section 930.33(c)(2) is removed. Outer continental shelf (OCS) oil and gas lease sales are Federal agency activities and are subject to the CZMA consistency requirement. *See* Sections III and IV of this proposed rule. Likewise, pre-lease sale activities are also subject to the consistency requirement if coastal effects are reasonably foreseeable. *See* 44 Fed. Reg. 37154 (comment to section 930.71); Letter from Leon Ulman, Deputy Assistant Attorney General, Office of Legal Counsel, U.S. Dept. of Justice, to C.L. Haslam, General Counsel, U.S. Dept. of Commerce and Leo M. Krulitz, Solicitor, U.S. Dept. of the Interior (Apr. 20, 1979).

Section 930.33(d) clarifies the CZMA federal consistency ''effects test.'' Early Federal-State coordination is emphasized to reduce conflict, build public support, provide a smooth and expeditious federal consistency review, and to help Federal agencies avoid costly last minute changes to projects in order to comply with management program enforceable policies. The earlier the coordination, the less likely it is that conflict will arise. Early coordination also enables a Federal agency to address coastal management concerns while the agency still has the discretion to alter the activity and before substantial resources have been expended.

Section 930.34 is replaced by a new section 930.34, which contains some of the information from the original section 930.34. Other parts of the original section 930.34 are moved to section 930.36.

Section 930.34(a)(2) encourages Federal agencies and State agencies to use existing procedures to coordinate consistency reviews. However, for permit requirements in management programs that are not required of Federal agencies by federal law other than the CZMA, the Federal agency may submit the necessary information in any manner it chooses so long as the requirements of this subpart are satisfied. NOAA has encouraged the practice of management programs using State permitting procedures as an administrative convenience to process Federal agency consistency determinations under CZMA § 307(c)(1) and (2). This results in efficient State consistency reviews by taking advantage of existing review procedures otherwise applicable to permitting actions. This new section is based on a comment in the original 1979 regulations, 44 Fed. Reg. 37147.

There were various comments on section 930.34(a) regarding a description of the nature of coordination being recommended, mandating early coordination, cross-referencing the section to section 930.36(b) and section 930.39, the meaning of the removal of the word ''directly,'' standardizing notification and response procedures, and adding ''cumulative effects'' to the section. NOAA has not made any changes based on these comments. The regulations should not specify the nature of the coordination recommended as States and Federal agencies should have flexibility to determine how best to conduct such coordination. NOAA cannot require early coordination. If a State has problems conducting consistency within the specified time periods, then the State needs to make changes to State laws or processes. The State could also develop an MOU with particular Federal agencies. Cross references to other sections are redundant and not necessary. As stated earlier, all references to coastal effects refers back to the definition in section 930.11(g), which includes reasonably foreseeable direct and indirect (cumulative and secondary) effects on coastal uses or resources.

Section 930.34(b) is moved to section 930.36(b) and amended to clarify that the Federal agency must provide a consistency determination to the State while the Federal agency still has the ability to alter the activity to address management program policies.

Sections 930.34(b)(2) and (c) is deleted, with parts of these sections moved to new section 930.34(c). These sections are confusing and are not needed, because the listing provision for Federal agency activities is a recommendation and not a requirement and Federal agencies must provide a consistency determination to applicable States for activities with coastal effects regardless of whether the State has listed the activity. One commenter said that the State agency should provide for public comment before an activity is listed or de-listed. Public comment is already provided for when the State proposes to submit a listing or de-listing to NOAA as a program change, under 15 CFR part 923, subpart H.

Other comments were made on section 930.34(c) by two Federal agencies and several State agencies requesting clarification and changes to unlisted Federal agency activities. In response, NOAA added language to subsections (b) and (c) to clarify that listing of Federal agency activities is optional. Thus, time limits for State agency notification of unlisted Federal agency activities are not appropriate since a Federal agency is required by statute to provide a consistency determination when coastal effects are reasonably foreseeable. In some cases, the Federal agency may not be aware of its CZMA responsibilities and NOAA cannot, by rule, remove the consistency requirement when there may be coastal effects. If a Federal agency actually makes a determination of no effects, in many cases a negative determination will be required so that the State will receive notice with attendant time frames. If a negative determination is

not required, and the Federal agency made a CZMA determination of no effects, it may so notify the State agency as a matter of comity and improved coordination. Previous language is not retained as it was confusing. Consistency is an affirmative duty for Federal agencies and, as such, the State agency listing procedure is not mandatory.

Section 930.34(d) encourages Federal agencies to seek assistance from the State agency in its determination of effects and consistency. At a minimum, State agencies must be able to provide Federal agencies with the applicable enforceable policies. Because identifying a State's enforceable policies can be difficult, Federal agencies noted the importance of this provision. Also, providing the Federal agency with the applicable policies will help focus the Federal agency's efforts on the State agency's concerns. One State agency commented that identifying enforceable policies could be problematic, because a State agency may fail to identify all applicable policies or the Federal agency may overlook policies. One State agency commented that State agencies should have flexibility to decide how to offer assistance, and one commenter said that the public or local governments should be able to identify additional policies.

NOAA did not change the rule based on these comments. The statute and regulations clearly require Federal agencies to be consistent with all applicable enforceable policies, including those that may have been overlooked at one time. Moreover, the regulation already addresses early identification of enforceable policies by stating that such identification is: ''based upon the information provided to the State agency at the time of the request.''

The statute and regulations are clear that the Federal agency prepares the consistency determination. If a State does not want to assist the Federal agency in the preparation, then the State loses a good opportunity to ensure that all of its relevant policies are considered and accurately interpreted. Further, NOAA believes that it is the State agency's responsibility to be able to accurately and completely identify its enforceable policies. The implementation of federal consistency at the State level is solely the responsibility of the State agency. Neither the public nor local governments can identify, or interpret, applicable management program enforceable policies for federal consistency purposes. *See* sections 930.6 and 930.11(o) (for responsibilities and definition of the State agency), and response to the comment regarding section 930.6.

Section 930.35 applies to negative determinations and clarifies existing requirements for negative determinations. Various comments were made regarding the State lists and when a negative determination should be provided. NOAA responded by adding a reference to the list in section 930.34(b). The word ''relevant'' is removed. NOAA has re-inserted the language from existing section 930.35(a)(3). NOAA had previously proposed to eliminate this subsection as not used and redundant. However, States provided persuasive information and examples that demonstrated that this section is used often, and used differently than the other requirements for negative determinations, and provides States with an effective notification of Federal agency activities. A consistency determination is not required if a State agency objects to a negative determination. The determination of coastal effects is made by the Federal agency and even if a State objects, the Federal agency may still rely on its no effects determination and proceed with the activity. In such cases, State and Federal agencies may enter into mediation to resolve the matter, or the State may litigate. NOAA cannot require a Federal agency to provide a consistency determination or a negative determination prior to the 90-day notification requirement. The regulations already contain sufficient encouragement for Federal agencies to consult with State agencies prior to the 90-day period and early in the planning phase of a Federal agency activity.

Section 930.35(b) clarifies the information requirements for a negative determination. A negative determination, by definition, is a finding of no effects. Thus, the information provided to the State agency for a negative determination may not be as substantial as that provided for a consistency determination. One Federal agency commented that it opposed the need to provide an evaluation of enforceable policies as part of its negative determination. A Federal agency's review of a State's enforceable policies is essential for determining coastal effects. This is emphasized in changes to section 930.33(a)(1) (Identifying Federal agency activities affecting any coastal use or resource).

Section 930.35(c) clarifies that if a State agency wishes to disagree with a Federal agency's negative determination, it must do so within 60 days or its concurrence is presumed. Public notice under CZMA § 306(d)(14) is not required for State agency review of negative determinations since negative determinations are not consistency determinations as contemplated by the Act. This section also clarifies that, if a Federal agency were to agree that coastal effects are reasonably foreseeable and that its negative determination was not correct, then the State agency and Federal agency may agree to an alternative schedule to promote administrative efficiency. One Federal agency objected to applying the 90-day statutory notification period and the 60-day State agency response period to negative determinations. Another Federal agency asked that the section be clarified regarding State lists and the postponement of the activity by the Federal agency. Several States commented that Federal agencies should be required to postpone action until disagreements have been resolved. One commenter and the environmental groups commented that States should provide for public comment of the State agency's review of a negative determination. NOAA responded by adding language to subsection (c) to clarify that State agencies are not obligated to respond to a negative determination. As such, States are not required to provide for public participation for negative determinations under CZMA § 306(d)(14). A State could acquiesce in all negative determinations that it receives without providing any review or response. It is simply an acknowledgment of the Federal agency's determination that its activity will not have coastal effects, and that, therefore, the activity is not subject to the consistency requirement. If a State agency believes that the activity will have coastal effects and the Federal agency agrees, then the Federal agency would provide a consistency determination, which would require the State agency to provide for public participation in the State agency's review of the consistency determination. To clarify this, the final clause of the subsection from the proposed rule is deleted as it does not matter whether a new 90-day clock is started or whether an alternative schedule is agreed upon for a consistency determination, public participation would be required.

To be consistent with the change to § 930.43(d), ''should postpone'' is changed to ''should consider postponing.'' A Federal agency cannot be required to postpone final action past the 90-day period. If a Federal agency

maintains that coastal effects are not reasonably foreseeable, and has met the procedural requirements of these regulations, then the Federal agency has fully met its consistency responsibilities. If a State disagrees with a negative determination, it can seek mediation where the Federal agency might agree to postpone action, or sue the Federal agency for making an arbitrary and capricious finding that coastal effects are not reasonably foreseeable. The regulations already require that a negative determination be submitted at least 90 days prior to agency action. NOAA does not intend to disturb this long-standing provision. This is based on the statutory requirement for consistency determinations since a Federal agency could determine, after input from a State, that the activity does in fact have coastal effects. The new review period, which is reasonably based on the review periods for consistency determinations, is provided to ensure that States respond in a timely fashion, if a State elects to respond. These review periods will actually provide a Federal agency with a more timely response to a negative determination, *i.e.,* within 60 days rather than 90 days. As States are not required to list Federal agency activities, neither can they be required to list activities for which negative determinations have been prepared in the past. A Federal agency could request that State do so, and it would be in the best interest of the State to provide such information, but it cannot be required.

Section 930.36 is moved to section 930.35(d). Section 930.36 incorporates existing sections 930.37 and 930.34(b) and elaborates on consistency determinations for proposed activities.

Section 930.36(c) clarifies the use of general consistency determinations. Federal agencies may provide State agencies with general consistency determinations for repetitive activities in the same manner that they provide single consistency determinations. A general consistency determination is still only allowed in a limited number of cases where the activities are repetitive and do not affect any coastal use or resource when performed separately. NOAA has added greater flexibility for State agencies and Federal agencies to mutually agree to use general determinations. The primary purpose of a general determination is for repetitive activities. Allowing a Federal agency to unilaterally provide a general determination for non-repetitive activities that have cumulative effects would be inconsistent with the 1990 CZMA changes. A general consistency determination may be used for de minimis activities only when the Federal agency and State agency have mutually agreed to do so. The terms ''periodic'' and ''substantially similar in nature'' are proposed to be deleted as the concept of ''repetitive'' includes these terms. One Federal agency commented that the section was vague. Several States commented that coordination with States prior to submitting a general determination should be required. Periodic consultation on a general consistency determination will vary depending on the nature of the Federal agency activity. Thus, NOAA is leaving this phrase unchanged and allowing States and Federal agencies to develop consultation periods. As is the case for non-general consistency determinations, Federal agencies cannot be required to consult with States prior to the 90-day period. It is certainly in the interest of all concerned to consult prior to submitting a general consistency determination and the regulations contain ample encouragement for early coordination.

Section 930.36(d). One Federal agency commented that a State agency should not be able to re-review earlier phases of an activity with which the State concurred. The regulation is clear that a consistency determination will be provided for each phase. By definition, the State then reviews and objects or concurs with each determination. The State cannot revisit its earlier concurrence. If the activity is substantially changed then the later phased consistency determination should cover the changes from the previous phase or new section 930.46 may require a supplemental determination.

Section 930.36(e) describes a method to efficiently address consistency requirements for a federal activity that is national or regional in scope. For example, a federal activity, such as a rulemaking or planning activity, may apply to more than one coastal State where coastal effects are reasonably foreseeable. Providing each State with a separate consistency determination may be difficult, inefficient and not cost effective, even with early coordination. The proposed regulation provides States and Federal agencies with the means to effectively coordinate, ensure adequate consideration of management programs, and provide an efficient, cost effective and timely method for meeting the consistency requirement. Two Federal agencies expressed concerns on whether national rulemaking or plans should be subject to consistency. One Federal agency commented that it was unclear how the process differed for national consistency determinations. One State commented that a State should be able to require additional information to start the consistency review period. One commenter said that a national consistency determination should require essentially the same information as that for a consistency determination submitted to one State.

NOAA disagrees that this subsection will not facilitate the development of consistency determinations that apply to multiple States. This section allows Federal agencies to send one consistency determination applicable to all States, using one discussion for coastal effects and enforceable policies that are in common among the States. There would be individual State sections in the consistency determination only for those State effects and policies that are not in common. The second sentence in subsection (e)(2) has been amended to clarify this. As discussed in response to comments on section 930.31, the CZMA makes no distinction between Federal agency activities that are local in scope and those activities, regulations, and plans, that are national or regional in scope. Whether these national activities are subject to consistency is based on whether coastal effects are reasonably foreseeable as a result of the activities. NOAA has not added language regarding additional information. Such a circumstance is already addressed in the regulations. Section 930.39 describes the content of a consistency determination. If the information required by section 930.39, in conjunction with section 930.36(e), is not provided, then the Federal agency has failed to submit a complete consistency determination and, thus, the 60-day State agency review period has not started and will not start until the information is provided. To require separate consistency determinations under this section would defeat the purpose of this section.

Section 930.37(c) is moved to section 930.36(d) and amended to clarify that phased consistency determinations refers to development projects and activities. Section 930.37 clarifies coordination of consistency with the use of NEPA documents to address consistency requirements. Federal agencies are not required to address consistency requirements in NEPA documents, but may use NEPA documents, at the Federal agency's discretion, as an efficient and effective mechanism to address the consistency requirements. The use of NEPA documents for consistency purposes does not, however, mean that a NEPA document necessarily satisfies all

consistency requirements. The Federal agency must still comply with the applicable sections in 15 CFR part 930, subpart C. Section 930.37 provides flexibility for States and Federal agencies to agree to different NEPA/consistency review procedures. Coordination between States and Federal agencies on federal consistency requirements should occur at an early stage, usually at the draft environmental impact statement (EIS) stage, and before the Federal agency reaches a significant point in its decision making and while the Federal agency still has discretion to modify the activity. A final EIS is a significant point in an agency's decision making and further modifications are much harder to do and require more resources. It is more efficient and in keeping with the intent of consistency for State agencies and Federal agencies to coordinate at the draft EIS stage. Arrangements should be made to do supplemental consistency reviews in case the project substantially changes in the final EIS or Record of Decision. Several commenters noted how useful this section will be regarding NEPA and CZMA coordination. One commenter, however, asserted that the section is flawed and is contrary to NEPA. NOAA disagrees.

NOAA has not added language to the rule regarding when to do consistency reviews in conjunction with NEPA, as many Federal agencies and States earlier commented that they want the flexibility to work out the timing of consistency and NEPA among themselves. Thus, the discussion above regarding draft EIS documents remains. This section is not flawed, and in fact, is consistent with and complements NEPA and CEQ's regulations. The CEQ regulations referred to in the comment discuss integrating NEPA, not the CZMA, into a Federal agencies decision making process. In addition, NEPA and the CZMA have different ''effects tests.'' Thus, it may be that a NEPA document may not contain needed CZMA information or that a conclusion regarding effects for NEPA purposes will not satisfy the CZMA effects test. What this section does do is encourage government efficiency and reduce paperwork by specifically encouraging Federal agencies to use NEPA as a vehicle to address all CZMA consistency issues, as well as NEPA issues in the same environmental review document.

Section 930.38. One State asked if program changes, including additions to management programs through the incorporation of a State's Coastal Nonpoint Program, applies to this section. NOAA's response is that all enforceable policies that become part of a management program through program changes, including the program change process for Coastal Nonpoint Programs, apply for federal consistency purposes once approved by NOAA.

Section 930.39(a) is amended to clarify that the Federal agency's evaluation of the management program's enforceable policies is included in the consistency determination, and that the Federal agency's consistent to the maximum extent practicable justification accompanies the consistency determination, if the Federal agency is aware that its activity will not be fully consistent with the management program's enforceable policies. Section 930.32(a)(2) already requires a written justification to the State agency describing the legal impediments to full consistency. The State agency needs to know this information as soon as the Federal agency is aware of an inconsistency. Thus, when a Federal agency knows that it is not fully consistent prior to issuing its consistency determination, it should provide its justification to the State agency as part of its consistency determination. There are times, however, when the Federal agency believes it is fully consistent and does not learn that it is not fully consistent until after submittal of the determination. In such cases the Federal agency needs to provide its justification to the State agency as soon as it learns of the activity's inconsistency, in any event before the end of the 90-day period. The last sentence in subsection (a) is derived from the last sentence of former section 930.34(a). One Federal agency commented that this section should allow for the Federal agency's evaluation of enforceable policies in documents accompanying the consistency determination. NOAA agrees. The evaluation of relevant enforceable policies requires that the State agency identify those policies upon request. The regulations already allow a Federal agency to provide its determination in any manner it chooses. Thus the evaluation could be in an accompanying NEPA document if the document was provided to the State agency along with the consistency determination. The section has been amended to more clearly address this.

Section 930.39(b) is amended to conform to CZARA. Federal agencies are responsible for evaluating the consistency of nonassociated facilities or any other indirect effects if the effects are reasonably foreseeable. The last clause is deleted since it is inconsistent with CZARA and the effects test and is covered under the proposed new definition of effects. One Federal agency commented that this section incorrectly expands the consistency requirement to the effects of activities. Consistency is based on the effects of Federal agency activities. Thus, there is no expansion of consistency beyond the statutory requirement. If a Federal agency did not consider the effects from its activity, there would be no basis on which to make its consistency determination or negative determination. The last clause is deleted since it is inconsistent, perhaps redundant, with the coastal effects definition, particularly the clarifications made by CZARA. While the CZMA does not confer upon Federal agencies jurisdiction to regulate activities beyond that granted to the Federal agency by its authorities, under the CZMA ''effects test'' Federal agencies are responsible for evaluating the consistency of nonassociated facilities or any other indirect effects if coastal effects are reasonably foreseeable. This is now more appropriately covered under the new definition of effects contained in section 930.11(g).

The last sentence of section 930.39(c) is deleted, because it is redundant with the rest of section 930.39(c). One Federal agency commented that adequate consideration is vague. NOAA has deleted ''adequate'' as the word is vague and ''consideration'' provides sufficient guidance to Federal agencies regarding non-enforceable policies. By definition, a Federal agency does not have to be consistent with non-enforceable policies, but, hopefully, will at least consider such policies and satisfy the policies if possible. If a management program does not have an applicable enforceable policy, then the Federal agency need not evaluate any corresponding coastal effects. However, experience has shown that it is very rare that a management program does not have some applicable enforceable policy, albeit a broadly applicable policy.

Section 930.39(d) is amended to clarify that if a Federal agency applies its more restrictive standards, it must, under the consistent to the maximum extent practicable standard, notify the State agency that it is proceeding with the activity even though the more restrictive federal standard may not be consistent with the State standard.

Section 930.39(e) clarifies the relationship between State permit requirements and the federal consistency requirements. Federal agencies must obtain State permits (including management program permits) when required by Federal law (other than the CZMA). For example,

the Clean Water Act (CWA) requires Federal agencies to obtain State permits and certifications that regulate and control dredging and water pollution within the navigable waters of the State. *See* 33 USC §§ 1323, 1341, 1344(t); *Friends of the Earth* v. *Department of the Navy,* 841 F.2d 927 (9th Cir. 1988). However, in some instances, there may be an issue as to the scope of a State or local permit that a Federal agency is required to obtain by another federal law. To insure that such a requirement is ''not enlarged beyond what the language [of the federal law] requires,'' *Department of Energy* v. *Ohio,* 503 U.S. 607 (1992), *citing, Eastern Transportation Co.* v. *United States,* 272 U.S. 675, 686 (1927), and to minimize conflicts in situations where the scope of the State permit requirement is an issue, Federal agencies or States should consult with the U.S. Department of Justice on the scope of the federal law. When a Federal agency is not required to obtain a State permit, the Federal agency must, pursuant to the CZMA, still be consistent to the maximum extent practicable with management program enforceable policies, including the standards that underlie a State's permit program.

Section 930.40 is amended to simplify the reference to section 930.39, by deleting subsections (b) and (c) and adding a reference to section 930.39 at the end of section 930.40.

Section 930.41(a) and (b) is amended to simplify terms used in these regulations, extend the time for State agency review of consistency determinations from 45 to 60 days, and clarify that State agency objections must be received by the last day of the 60-day review period (or last day of an extended period). Presently, a State response to a Federal agency's consistency determination is either an agreement or disagreement, and a State agency's response to an applicant's consistency certification for a federal license or permit activity is either a concurrence or an objection. The difference is largely semantic and confusing. Thus, all State responses to any consistency determination or certification are now either a concurrence or an objection. The intent of the change regarding the State agency's response is to clarify when the Federal agency may presume concurrence.

The time period for a State agency's response to a consistency determination would be increased from 45 days to 60 days to allow States to provide adequate public participation as required by CZMA § 306(d)(14) (added in 1990 by CZARA). Federal agencies must provide consistency determinations to State agencies at least 90 days prior to federal action. CZMA § 307(c)(1)(C). Currently, NOAA regulations require States to respond within 45 days of receiving the determination. Section § 930.41(a). If a State needs more time, a Federal agency must allow one 15-day extension. Section 930.41(b). These regulatory requirements were promulgated prior to the addition of CZMA § 306(d)(14). OCRM's Final Guidance implementing CZMA § 306(d)(14) did not change these requirements. 59 Fed. Reg. 30339. It will be difficult for many States to meet the public participation requirement under State law and still respond within 45 days. The likely result of this new requirement is that for most reviews of consistency determinations, States will need at least one 15 day extension, resulting in at least a 60-day review. Thus, in order for States to develop meaningful public participation procedures, and to provide greater predictability for Federal agencies as to when a State agency's consistency review will be completed, NOAA has provided States with a 60-day review period (extension provision remain the same). This should alleviate the inconsistency between current regulations and the CZMA § 306(d)(14) requirement. The total time allowed before a Federal action may commence (90 days) does not change.

Two Federal agencies and one interest group commented that they disagree with extending the State agency's response time to 60 days. One Federal agency commented that responses should be received by the last day and not postmarked. Several States commented on the wording of the section related to ''postmarked'' as provided for in the proposed rule. NOAA agrees that using ''postmarked'' may create confusion and will not provide the notification deadline that is needed for consistency reviews and which are contemplated by the statute and which has been the long-standing interpretation of the existing regulations. By statute, there must be a date whereby concurrence can be presumed. NOAA also agrees that the use of fax machines and email make it much easier for the State agency to send its response, and the Federal agency to receive it by the deadline. This change is also reasonable given the longer State agency review period for Federal agency activities. Thus, NOAA has changed ''postmarked'' to ''receipt'' in sections 930.41(a), 930.62(a), 930.78(b) and 930.155(d).

NOAA does not believe that the reduction in time between a State agency's response and the end of the 90-day period will substantially alter any necessary discussions between the State and the Federal agency. Experience shows that States and Federal agencies usually know before a State response if there is a problem. Usually a Federal agency will delay starting its activity past the 90 days to try and reach agreement with the State. If the Federal agency cannot do this, and it is consistent to the maximum extent practicable, then it can proceed at the end of the 90-day period.

The word ''immediately'' is retained since the Federal agency is under the impression that the 60-day review period has begun and needs to know as soon as possible if its determination and accompanying information is not complete. Even two weeks may be too long a time. There should not be a problem with networked management programs, as a completeness review is minimally substantive and should just be making sure the information required by section 930.39(a) is included. The information may not have everything the State wants, but that is not what is required by section 930.39(a) to start the review period.

Section 930.41(c) is amended to clarify that the 90-day period begins when the State agency receives the determination and that Federal agency action cannot commence prior to the end of the 90-day period unless the State agency concurs or the Federal agency and the State agree to a shorter period.

Section 930.41(d) is added to clarify that States cannot unilaterally place an expiration date on their concurrences. States must decide if they can concur with a consistency determination absent an agreement on time limits. One Federal agency commented that the language of the section is vague. States commented that the section may not be necessary and could be covered by section 930.4 (conditional concurrences). The word ''modifications'' has been inserted to clarify that a later action involving a previously reviewed activity could be a later phase or a modification. A cross-reference to supplemental consistency determinations under section 930.46 is also added.

There are several reasons why time limits are not acceptable. First, the CZMA requires a Federal agency to provide a consistency determination 90 days before final Federal agency approval. CZMA § 307(c)(2). The CZMA does not allow States to re-review the same activity. Second, State consistency decisions and objections must be based on the enforceable policies of a State's management program. A time limit on a

State's concurrence would be based on the possibility that the activity or the State's program would change and not on enforceable policies, as required by the CZMA. Further, State agencies and Federal agencies may agree to a time limit for a State's concurrence, including concurrences for de minimis activities and general determinations. The CZMA does, however, require Federal agencies to carry out each activity in a manner that is consistent to the maximum extent practicable with a State's enforceable policies. Thus, if a project substantially changes between the time that the State reviews the activity and when the activity begins, the Federal agency must provide a new or supplemental consistency determination since the State would not have had the opportunity to review the ''new'' activity. This is precisely the situation section 930.46 is designed to address. Section 930.46 only applies to previously reviewed activities that have not yet begun and the coastal effects are substantially different then as originally reviewed by the State agency.

Regarding the use of a conditional concurrence under section 930.4 to impose time limits, the CZMA only authorizes one bite of the consistency apple for any particular Federal agency activity. It is a basic consistency requirement that Federal agencies provide consistency determinations for proposed activities and the States review the activity based on the information available at that time. If an activity later substantially changes, the Federal agency may have to provide a supplemental or a phased consistency determination. A conditional concurrence, therefore, cannot be used to provide for subsequent review of the same activity. For the same reasons a ''time'' condition would also be inconsistent with the CZMA. That is why a State should object rather than issue a conditional concurrence. Thus, NOAA has not cross-referenced section 930.4. If a State agency does issue a conditional concurrence with a time limit, and the Federal agency does not agree, the conditional concurrence automatically becomes an objection. It may also be that the objection would be invalid unless the time limitation had a basis in an enforceable policy. Under the proposed section 930.41(d), a State agency and a Federal agency may agree on a time limitation. The proposed section 930.41(d) provides for instances where a project changes or the effects change.

Section 930.41(e) clarifies that a State agency may not assess the Federal agency with a fee for the State's review of the Federal agency's consistency determination, unless such a fee is required under federal law applicable to that agency. One State commented that fees should be allowed. NOAA disagrees. The CZMA does not require Federal agencies to pay processing fees. OCRM cannot require such fees by regulation. Thus, States cannot hold up their consistency reviews or object based on a failure by a Federal agency to pay a fee. Such a requirement would require a change to the CZMA itself, or other federal laws. This is beyond the scope of these revisions to the regulations.

Section 930.42 is moved to section 930.43. New section 930.42 details the public participation requirement for Federal agency activities. Public participation for a State's review of a Federal agency's consistency determination is required by CZMA § 306(d)(14). *See* NOAA's final guidance on this requirement, 59 Fed. Reg. 30339. The statutory section requires that ''[t]he management program provide for public participation in permitting processes, consistency determinations, and other similar decisions.'' Proposed section 930.42 is sufficiently broad to give States flexibility in developing public participation procedures that meet the intent of § 306(d)(14). NOAA reviews each State's procedures during regularly scheduled evaluations of management programs under CZMA § 312 for compliance with the public participation requirement under § 306(d)(14), and will recommend procedural changes if necessary to meet proposed section 930.42. The purpose of the requirement is to provide the public with an opportunity to comment to the State agency on the program's review of a federal activity for consistency with the enforceable policies of a management program, in addition to commenting on the activity itself. Thus, a Federal agency cannot be required to publish or pay for the notice.

A number of States commented that electronic public notices, including web sites, should be acceptable public notice. Other States had various comments on notice in remote areas, the Federal agency providing names and addresses of interested persons, notice for the affected area, and joint notices. The environmental groups commented that electronic notices should not be a procedural option. Electronic notices cannot be the only form of public notice used. Many people do not yet have ready access to a computer or the Internet. Thus, the regulations have been clarified to exclude electronic notices as the sole notice. They can be used in conjunction with other notices. Electronic means can also be used as the source of additional information since people can use public libraries and other facilities that have Internet access. In very rural areas where there are no local papers or access to State gazettes, etc., the State will have to use its best judgement as to how to adequately notify the public. In remote areas of Alaska, this may mean posting a notice in a Post Office or other public area. The current regulations allow this flexibility. Federal agencies are under no obligation to fulfill the requirements of this section regarding public comment on the State's review of a consistency determination. Thus, the Federal agency is under no obligation to provide names of interested parties as this may result in an expectation, and demand, that the Federal agency do so. NOAA has changed ''in the area'' to ''for the area'' as ''for'' is broader and provides the State with flexibility for providing adequate public notice, as suggested in the comment. However, NOAA reiterates that electronic notice cannot be the sole method of notice to the public. NOAA has included the language encouraging joint notices as this would not impose an additional burden on the Federal agency, and if used, should be a more efficient use of Federal and State resources.

Section 930.42(a) is re-designated as section 930.43(a) and amended to clarify that State objections must be based on the enforceable policies of an approved management program and that the objection letter must describe and cite the enforceable policies, and must state how the federal activity is inconsistent with the enforceable policy. This section also clarifies that the identification of alternatives by the State is optional, but that State agencies should describe alternatives, if they exist.

Sections 930.43, 930.63(b) and (d). One Federal agency commented that the mandatory nature of the current regulations regarding the identification of alternatives by the State agency be retained. Two commenters said that it is not clear what happens when an applicant adopts a State alternative. Several States commented that States should not have to re-design a project through describing alternatives.

While identifying alternatives is useful to States, Federal agencies and applicants, the CZMA does not require that States identify alternatives. The optional nature of alternatives was recognized in the previous regulations by the phrase ''(if any)'' and is necessary since the identification of an alternative does not remove the State agency's objection. An applicant would always have to go back to the State agency to

have the State agency remove the objection to allow Federal agency approval (unless the applicant appealed the State agency's objection to the Secretary). NOAA also agrees that State agencies should not be responsible for the design of a project, although States should describe alternatives with sufficient specificity to demonstrate their reasonableness. The regulations recognize this in section 930.63(d) by having the applicant determine its alternative options ''in consultation with the State agency: * * *'' This would allow the State agency to describe an alternative, but would still require the applicant to ''design'' the alternative and to consult with the State agency on whether the altered project was consistent. Then, when an applicant adopts a consistent alternative, the State would remove its objection and the Federal agency could approve the activity so long as the approval was consistent with the alternative agreed to between the State and the applicant.

Section 930.43(d) clarifies that, in the event of a State objection, the remainder of the 90-day period should be used to resolve differences and that Federal agencies should postpone agency action after the 90-day period, if differences have not been resolved. It also clarifies that, notwithstanding unresolved issues, after the 90 days a Federal agency may only proceed with the activity over a State's objection if the Federal agency clearly describes, in writing, the federal legal requirements that prohibit the Federal agency from full consistency. Several Federal agencies commented that language contained in the proposed rule regarding Federal agency obligations when the Federal agency asserts it is fully consistent was unworkable and not consistent with the statute. Several States commented that clarifying language was needed regarding when and how the Federal agency should submit its consistent to the maximum extent practicable justification. Two States commented that mediation should be required if there is a dispute and before the Federal agency proceeds with the activity. One State commented that the section should include a statement that the State may institute legal action if not satisfied with the Federal agency's response. The environmental groups commented that a Federal agency should not be able to proceed with an activity over a State's objection.

NOAA understands that there may be disagreements between a State agency and Federal agency as to whether a Federal agency is fully consistent with a management program's enforceable policies. This is particularly problematic where the State's policy is broadly worded. A Federal agency activity that is fully consistent and has met the consistency requirements should be able to proceed with the activity. A State agency may object based on its interpretation of its policies. In such cases, the State may be requiring consistency for an interpretation that is not set forth in the enforceable policies. This does not make the enforceable policy invalid, but it does create a factual issue regarding full consistency. In such cases, mediation may resolve the matter, or an MOU developed, as was the case between Alaska and the Forest Service. If this does not work, and the Federal agency elects to proceed with the activity after 90 days, then the State may choose to litigate the question of whether the Federal agency is in fact fully consistent. The section has been modified accordingly.

In response to one comment, NOAA agrees that it is the ''Federal agency's belief'' that it is consistent that controls its action, and has addressed this comment by including the phrase: ''the Federal agency has concluded * * *'' NOAA has also added a reference to the new language in section 930.39(a), requiring that the Federal agency's consistent to the maximum extent practicable justification be included in the consistency determination if the agency is aware that its activity will not be fully consistent at the time the determination is submitted to the State agency.

The use of the word ''cannot'' and the use of the suggested ''can'' may both cause misunderstanding. The intent of section 930.43(d) is to provide an appropriate mechanism for the Federal agency to examine whether it is prohibited by law from acting in a manner consistent to the maximum extent practicable. To be absolutely clear in this very important, and much discussed section, NOAA has not used ''can'' and has replaced the word ''cannot'' with specific language from the consistent to the maximum extent practicable standard in section 930.32.

Mediation under the CZMA and NOAA's regulations is optional and non-binding. NOAA cannot, by rulemaking, require a Federal agency to enter into mediation. Likewise, if a State requests mediation, the Federal agency is not required to participate. As for notice to the Federal agency regarding possible State litigation, a State may always sue a Federal agency under the Administrative Procedures Act. It is not necessary to place such language in this section, although the regulations discuss State enforcement, including legal action, in the new section 930.5.

This section does not refute the basic purpose of the federal consistency requirement. A fundamental component of federal consistency is that a Federal agency, despite a State's objection, may proceed with a Federal agency activity after the 90-day period, so long as the Federal agency describes to the State agency, in writing, the federal legal requirements that prohibit the Federal agency from being fully consistent with the enforceable policies of the State's management program. Section 930.43(d) clarifies this component of the CZMA and existing NOAA regulations. As was suggested by several commenters, the CZMA federal consistency requirement can be thought of as a limited waiver of federal supremacy. (Under Article VI, cl. 2 of the U.S. Constitution, Federal law is the supreme law of the land and State law cannot interfere with the execution of federal law. *See McCulluch* v. *Maryland,* 17 U.S. (4 Wheat) 316 (1819). Congress, as part of its legislative powers, can limit the Federal Government's supremacy and sovereign immunity.) The waiver of federal supremacy in the CZMA is the requirement to be consistent with State management programs. The limits are defined by the consistent to the maximum extent practicable standard and CZMA §§ 307(e) and (f). CZMA § 307(e) requires that the CZMA does not supersede, modify or repeal existing law. CZMA § 307(f) requires that the CZMA shall not affect the pollution control requirements of the Clean Water Act or Clean Air Act. The CZMA § 307(c)(1) requires that federal activities ''be carried out in a manner that is consistent to the maximum extent practicable'' with the enforceable policies of a State's management program. The phrase ''be carried out'' implies that the activity may proceed. The qualifier is that the activity must be carried out in a manner consistent to the maximum extent practicable with a State's enforceable policies. Further, the statute expected that federal activities could proceed after 90 days by stating that Federal agencies provide a consistency determination no later than 90 days ''before final approval'' of the federal activity. Congress stated that it is not anticipated that there will be many situations where as a practical matter a Federal agency cannot carry out its activities without deviating from approved management programs. H.R. Rep. No. 1049, 94th Cong., 2d Sess. 19 (1972). Congress also found that there may be instances where a Federal agency activity cannot be conducted

fully consistent with a State's enforceable policies and may proceed over a State's objection. *Id.* It is precisely this legislative intent that led, in 1979, to NOAA's regulations requiring full consistency unless full consistency is prohibited based upon existing legal authority applicable to the Federal agency's operations. Deviation from full consistency is allowed due to unforeseen circumstances which present a substantial obstacle preventing complete adherence to the management program. Further evidence of Congressional intent regarding whether a Federal agency activity may proceed over a State's objection is found in the different language in the other CZMA federal consistency sections. CZMA §§ 307(c)(3)(A), (B), and 307(d) all specifically prohibit a Federal agency from issuing its approval or funding if a State agency has objected. Because Congress included such clear language in these three other instances, it follows that Congress intentionally excluded this meaning from other sections, *i.e.,* CZMA § 307(c)(1). If Congress intended to require that a Federal agency activity proceed only with State agency agreement it would have said so.

The Presidential exemption contained in CZMA § 307(c)(1)(B) does not support the view that Federal agencies may not proceed over a State's objection. The Presidential exemption was added to address a situation where a State agency disagrees with a Federal agency's consistency determination, resolution by mediation is not likely, the State agency sues the Federal agency, and the Court finds that the activity is not in compliance with a State's enforceable policies. In those instances, the Secretary may request that the President exempt the specific activity from consistency if the President finds that the activity is in the paramount interest of the United States. The section was added to be consistent with similar extraordinary remedies of other federal statutes and to reinforce the point that no Federal agency activities are categorically exempt from the consistency requirement. Congress would not have couched a requirement that Federal agencies cannot proceed over a State agency's objection in an elaborate Presidential exemption.

NOAA's regulations further define the long-standing interpretation that Federal agencies may proceed with an activity despite a State agency's objection. NOAA's definition of consistent to the maximum extent practicable requires full consistency ''unless compliance is prohibited based on the requirements of existing law applicable to the Federal agency's operations.'' Section 930.32(a)(existing). This interpretation is also supported by a comment to the original regulations where NOAA stated that ''Federal agencies are encouraged to suspend implementation of the activity beyond the 90-day period pending resolution of the disagreement.'' Section 930.42(c) (44 Fed. Reg. 37149, Monday, June 25, 1979) (emphasis added). Thus, if a Federal agency asserts full consistency is prohibited and describes the legal authority which ''limits the Federal agency's discretion to comply,'' the Federal agency may proceed with the activity at the end of the 90-day period. *Id.;* Section 930.34(b) (existing).

Section 930.46 addresses the situation where a proposed activity previously reviewed, but not yet begun, will have coastal effects substantially different than originally described to the management program. A similar section is repeated at the end of subparts D and F. *See* sections 930.66 and 930.101. Two commenters said that the State agency should be required to notify others under subsection (b). Several other States commented that there should be a rebuttable presumption that a project is subject to re-review if the project has not commenced in 5 years. One commenter asserted that this provision would put offshore projects in a never-ending loop of approval and should be re-worked to reduce this uncertainty.

NOAA has not changed the rule, based on these comments. If a proposed project has substantially changed, and the State has not reviewed the changes, then it is a new project, and a new consistency determination is required. Since the consistency test depends on whether coastal effects are reasonably foreseeable, and not on the nature of the activity, substantial new coastal effects would also trigger the consistency requirement. Thus, where an activity has not started, substantial new effects have been discovered, and the State has not had the opportunity to review the activity for consistency in light of these effects, sections 930.46, 930.66 and 930.101 would require a supplemental consistency determination or certification. This is an affirmative duty on the part of Federal agencies and applicants. However, there may be times when Federal agencies or applicants do not provide supplemental consistency statements. In such cases, subsection (b) of these sections allow a State agency to notify the Federal agency or applicant that it believes that a supplemental review is needed. Such notification is at the State agency's discretion, thus ''may'' is retained and ''shall'' is not used. States may seek compliance through negotiation, mediation or litigation. This proposed section is similar to NEPA requirements for supplemental statements. *See* 40 CFR section 1502.9(c)(1). NOAA expects that this section will be little used, but where it is used will eliminate confusion as to the consistency process and brings the regulations into conformance with the changes made by CZARA.

NOAA has not added a rebuttable presumption that if a project has not commenced within a certain amount of time, it should be subject to re-review. Time is not the issue here. The intent of this section is not to give the State agency a second bite at the consistency apple, but rather, to give States the opportunity to review substantial changes in the project or foreseeable coastal effects not previously reviewed by the State.

Finally, NOAA rejects the argument that supplemental review will create a never-ending loop of approval. The sections apply only to activities that have not yet begun and which are substantially different than that which the State previously reviewed. Even without these sections, Federal agency activities meeting these two criteria would be required to provide a new consistency determination and for license or permit activities, in many cases applicants would provide a new consistency certification since such changes would require a modification to the federal application that would require consistency review. Regarding offshore projects, a supplemental coordination section is not added to subpart E, since subpart E and the regulations implementing the Outer Continental Shelf Lands Act already contain a detailed process for supplemental consistency reviews when OCS plans have substantially changed. NOAA is not disturbing this existing coordination between the two statutes.

Subpart D—Consistency for Federal License or Permit Activities

Sections 930.50 and 930.51(a) are amended to be consistent with the statutory language referring to ''required'' federal license or permit activities. A required federal approval means that the activity could not be performed without the approval or permission of the Federal agency. The approval does not have to be mandated by federal law, it only has to be a requirement to perform the activity. One commenter suggested adding additional effects language to section 930.50. Additional effects language is not added to this section, because effects are defined in section 930.11(g), and apply throughout the regulations when discussing coastal effects.

Section 930.51(a) clarifies that a federal lease to a non-federal applicant, *e.g.*, to use federal land for a private or commercial purpose, is a form of authorization or permission under the definition of federal license or permit, with the exception of leases issued pursuant to lease sales, *e.g.*, under the Outer Continental Shelf Lands Act, which are Federal agency activities under 15 CFR part 930, subpart C. One Federal agency commented the definition is extremely broad and that it needs to clarify the application of this subpart to OCS plans. The commenter further states that the regulation seems to ignore the importance of effects when determining whether a federal license or permit is subject to consistency. Finally, this Federal agency comment argued that OCS lease suspensions should not be subject to consistency, and the language regarding ''lease sales'' should be clarified to distinguish lease sales from leases. One State commented that a ''lease'' is a form of approval regardless of other applicable federal approvals. One State and another commenter suggested that ''right-of-way'' permits and ''easements'' be added to the definition. One commenter urged that a decision that no consistency review will take place should be subject to public comment.

The definition of license or permit has been in place and well-understood for over 20 years. In NOAA's view, an inclusive description of federal approvals is necessary to implement Congress' intent that consistency apply to all federal actions that have coastal effects. The statute is clear that OCS plans, and federal approvals described in detail in such plans, are subject to subpart E, and the section now states this.

The term ''federal license or permit'' refers to any required federal approval. Whether a license or permit activity is subject to the consistency requirement does depend on whether coastal effects are reasonably foreseeable and which is determined by NOAA either when the State agency lists (*see* section 930.53) a particular federal approval in its management program or when a State agency seeks to review an unlisted activity (*see* section 930.54). The same applies to OCS ''lease suspensions.'' As stated in NOAA's letter to the California Coastal Commission, dated November 12, 1999, OCS lease suspensions are federal license or permits under NOAA's regulations. However, NOAA made no determination whether there were coastal effects resulting from the suspensions at issue and, thus, no determination whether consistency applied. If a State agency were to review a lease suspension for consistency, the State's review would be limited to the effects of the lease suspension itself and any cumulative effects that may flow from the suspension(s). Since a lease suspension is not a renewal of the lease, the State could not review the underlying lease. When requesting a suspension, a lessee is not requesting a re-leasing approval, and MMS does not re-evaluate the lease when granting or directing a suspension. If a lease were to terminate and MMS were to ''re-lease'' the tracts, then the re-leasing would be subject to consistency under CZMA § 307(c)(1).

In NOAA's November 12, 1999, letter, NOAA concluded that as a general matter, lease suspensions do not affect coastal uses or resources and do not generally authorize activities to occur during the suspension period that can be reasonably expected to affect coastal uses or resources. Therefore, it is highly unlikely that NOAA would approve the listing of lease suspensions in a management program as a federal license or permit subject to consistency, or approve a State agency's request to review a lease suspension as an unlisted activity. In determining whether to approve the review of a lease suspension as an unlisted activity, NOAA would examine the effect of the lease suspension in extending the term of the lease or postponing the coastal effects of the OCS activities to a point in time in the future or such other effects as are reasonably foreseeable from granting of the lease suspension(s). This effects test must be met by the State agency submitting a request to review the lease suspension(s) as an unlisted activity. NOAA cannot completely rule out the possibility that a lease suspension or set of lease suspensions could affect the uses or resources of a State's coastal zone, and thus the CZMA bars NOAA from categorically exempting suspensions from consistency. NOAA also believes that OCS lease suspensions could be removed from possible State agency review under subpart D, if MMS were to describe the expected universe of lease suspensions in detail in the OCS plans. In the alternative, specific suspensions can be addressed between lessees, MMS and coastal States as it was in the Memorandum of Understanding between MMS, Mobil and the State of North Carolina. *See* Appendix I, at I–3, Final Environmental Impact Report on Proposed Exploratory Drilling Offshore North Carolina, August 1990. If MMS were to do this, then a State agency concurrence in an OCS plan under subpart E, would also include concurrence of any lease suspensions granted for the expected reasons described in the OCS plans.

It is not correct to say that OCS activities are not subject to subpart D. It is correct that OCS plans, and federal licenses or permits described in detail in OCS plans, are subject to subpart E. However, subparts D and E are intertwined, as provided for in the statute (CZMA § 307(c)(3)(B)) which subjects subpart E reviews to CZMA § 307(c)(3)(A). Thus, OCS plans and licenses or permits described in detail in the plans are subject to subpart E, except for some information/procedural items. OCS related federal license or permits not described in detail in OCS plans are subject to subpart D and lease sales themselves are subject to subpart C.

NOAA agrees that the relationship of ''leases'' and ''lease sales'' could be clearer and has clarified that the term lease does not include leases issued pursuant to OCS lease sales. NOAA also agrees with the comment that leases that are federal license or permits as defined in this section are federal approvals regardless of whether there are other federal approvals required and has deleted the language referring to other approvals.

Rights of way and easements are not specifically included as the definition is sufficiently broad to cover these actions if they are ''required federal approvals.'' A State agency can always list specific approvals in its management program. Public participation is not added for a decision that consistency review will not occur. A decision that consistency will not occur, either because there are no coastal effects, there is no federal application, or there is no required federal approval, means that the CZMA consistency provision does not apply, and public review is not mandated.

Section 930.51(b)(2) is amended to clarify that ''management program amendments'' as used in this section means any program change, *i.e.*, amendment or routine program change, approved by OCRM under 15 CFR part 923, subpart H.

Section 930.51(c) clarifies that a major amendment is not a minor change to a previously reviewed activity, but a change that affects any coastal use or resource in a way that is substantially different than effects previously reviewed by the State agency. One State commented that the section as proposed did not apply the definition of major amendment to all contexts used in subsection (b). NOAA agrees that the definition of major amendment needs to apply to all three cases under subsection (b), and has made this change.

Section 930.51(d) clarifies that a ''renewal'' includes subsequent re-approvals, issuances or extensions. Administrative extensions that are required must be treated like any other renewal or major amendment. Otherwise, some activities that should obtain a renewal continue to operate for years under administrative extensions. These activities may have coastal effects that have not been reviewed by management programs and which need to be consistent with a State's enforceable policies. These activities are, in a sense new activities. Renewals cannot be used to negate the consistency requirement.

Section 930.51(e) describes some parameters for how the determination of major amendments, renewals and substantially different coastal effects in section 930.51 shall be made. Whether the effects from a renewal or major amendment are substantially different is a case-by-case factual determination that requires the input from all parties. However, a State agency's views should be accorded deference to ensure that the State agency has the opportunity to review coastal effects substantially different than previously reviewed.

Section 930.51(f) clarifies the ramifications to the consistency process when an applicant withdraws its application for a federal approval or if the approving Federal agency stays the application review process. If the applicant withdraws its application, then the consistency process stops (since there is no longer a federal application to trigger consistency). If the applicant re-applies, then a new consistency review is required. Likewise, if the Federal agency stays its proceeding, then the consistency review process will be stayed for the same amount of time. This will avoid confusion as to what the consistency review period is in these cases.

Section 930.52 is amended to add to the definition of ''applicant'' applicants from other nations for a United States required approval, and applicants filing a consistency certification under the proposed general permit consistency process under section 930.31(d). Regarding other nations, the CZMA requires any applicant for a required federal license or permit to certify consistency with management programs. There may be instances where a foreign company or individual must obtain a United States approval.

Two commenters want subpart D to apply to Federal agencies applying for federal permits. Federal agency activities are not subject to CZMA § 307(c)(3) requirements. The CZMA is clear: Federal agency activities are subject to CZMA § 307(c)(1). CZMA § 307(c)(3) applies to non-federal applicants for federal permits or licenses. Congress declared that CZMA §§ 307(c)(3)(A) and (B) and 307(d) ''govern the consistency of private activities for which federal licenses or permits are required'' and that the 1990 CZMA changes do ''not alter the statutory requirements as currently enforced under [the CZMA]. These requirements are outlined in the NOAA regulations (15 CFR 930.50–930.66) and the conferees endorse this status quo.'' Conference Report at 971–72 (emphasis added).

Section 930.53(a) is removed. Thirty-three of the thirty-five eligible coastal States have federally approved management programs and the remaining two States are in the process of developing a management program. Thus, this section is no longer necessary. Also, federal involvement in the identification of federal activities is addressed in the program development regulations. *See* section 923.53.

Section 930.53(b) is moved to section 930.53(a).

Sections 930.53(a)(1) and (2) are added to clarify the review of listed federal license or permit activities occurring outside of the coastal zone. The geographic location requirement is a means of notifying applicants and Federal agencies of activities with reasonably foreseeable coastal effects and are, subject to consistency review. The most effective way for a State to review listed activities outside the coastal zone is to describe the geographic location of a State's review. States are strongly encouraged to modify their programs to include a description of the geographic location for listed activities occurring outside the coastal zone to be reviewed for consistency. This section also codifies existing administrative policy that treats listed activities outside the coastal zone (for which a State has not described a geographic location), and listed activities outside a geographically described location, as unlisted activities under this subpart. (Because a State's coastal zone boundary is a geographic location description, Federal lands located within the boundaries of a State's coastal zone are sufficiently described for federal license or permit activities occurring on those federal lands.)

Section 930.53(b). Several States commented that listing should not be required for general concurrences. One State commented that the relationship between general concurrences and federal general permit programs is not clear. The environmental groups commented that ''minor'' is not defined. One commenter asserted that general concurrences are misused by States and cumulative impact studies should be done with public comment and should be re-reviewed every three years.

NOAA has not changed the listing requirement. General concurrences are encouraged as a matter of administrative convenience and for more efficient consistency reviews of minor activities. If a State agency chooses to develop a general concurrence, applicants for the federal approval must be notified of the general concurrence. Since the general concurrences are tied to the federal license or permit activities listed in the management program, the State's list is an effective place to provide notice of the general concurrences. The regulations recognize that these minor activities can have cumulative effects and that the State agency can develop conditions allowing concurrence for such activities. The section already requires that prior to developing a general concurrence, the State agency provide for public notice and comment pursuant to section 930.61. This section does not affect the Nationwide permit program or other federal general permits (unless the State agency chooses to adopt a general concurrence for federal approvals under these programs). The promulgation of federal general permit programs is a Federal agency activity and is not affected by this section.

Sections 930.53(c), (d) and (e) are moved to sections 930.53(b), (c) and (d), respectively. The addition of sections 930.53(c)(1) and (2) clarify the procedures for consultation with Federal agencies and approval by the Director. One Federal agency commented that the State's notification to the Federal agency needs to adequately describe the proposed change in order for the Federal agency to respond. NOAA agrees that the State agency needs to describe what the proposed change is, thus, the phrase ''should describe'' is changed to ''shall describe.''

Section 930.54(a)(1) is amended to clarify where State agencies should look to monitor unlisted activities. Specifically, draft NEPA documents and **Federal Register** notices are key documents State agencies should review. This section also clarifies that State agency notice should be sent to the applicant, the Federal agency, and the Director of OCRM. The term ''immediately'' has been deleted as there is already specified a 30-day time period in which to respond. Two commenters believe this section should be clearer regarding an ''application'' to a Federal agency. One State commented that

Federal agencies or applicants be required to provide notice of unlisted activities.

NOAA agrees that the language in subsection (a)(1) is clear that the 30-day time period for State agencies to notify an applicant and the Federal agency is notice of an application that has been submitted. To make this perfectly clear, NOAA has added clarifying language. NOAA has not used the language in the comment since that language could be interpreted to require the State agency to act within 30 days from the date of the submission of the application, rather than 30 days from notice of an application that has been submitted. A State should have the opportunity to request review of an unlisted activity 30 days from receiving notice that an application has been submitted and not just 30 days from when the application was actually submitted to the approving Federal agency. Written notice is not required, however, in subsections (a)(1) or (2), because Federal agencies and applicants are not under an affirmative duty to notify the State agency unless the federal license or permit is listed in the management program. Such notice is encouraged, but cannot be required.

Section 930.54(b) is amended to clarify that the State agency's notification must also include a request for OCRM approval and the State agency's analysis supporting its claim that coastal effects are reasonably foreseeable.

Section 930.54(c) is amended to clarify that the Director's decision deadline may be extended by the Director for complex issues or to address the needs of one or more of the parties. This codifies existing practice which has been useful in resolving issues often leading to the State agency's withdrawal of its request. One Federal agency commented that an extension of NOAA's decision deadline be limited to a specified time.

It is unnecessary to specify a time frame for the Director's decision since the extensions, if any, may need to vary in duration depending on the issues. However, NOAA has added a sentence requiring the Director to consult with the State agency, Federal agency and applicant prior to issuing any extension. Also, the proposed revision states that the Director shall notify the parties of the expected length of the extension, therefore a specified time frame will be established for each extension.

Section 930.54(d). One commenter believes that NOAA should not assess coastal effects, but that States should do so. NOAA does not agree. NOAA's long-standing administrative process implemented through these regulations determines coastal effects for listed activities or unlisted activities. Listed activities are first approved by NOAA as part of program approval or through a program change. Once NOAA has approved a federal approval as listed in a management program, then effects are assumed. If an activity is unlisted, coastal effects must be determined, and again, it is NOAA's responsibility and role to make such a determination. Congress has endorsed this implementation of the statute and all parties, States, Federal agencies and applicants rely on NOAA to ensure consistency reviews occur only where activities have coastal effects.

Section 930.54(f) provides applicants and State agencies with the flexibility to agree to forego the unlisted activity procedure, have the applicant subject itself to consistency, and expedite the consistency process. This provision will help to resolve coastal management issues informally and avoid delays due to disagreement over whether the application should be subject to State agency consistency review. One State commented that a Federal agency and State agency should be able to agree to subject an unlisted activity to consistency.

NOAA disagrees. The consistency requirements in this subpart are for the State agency, the Federal agency and applicants. The listing requirement puts all on notice that the listed activities are subject to consistency and the State's review. Any other decision, outside of the unlisted process, that would subject an applicant to the consistency requirement, would require agreement by the applicant. The Federal agency and State agency cannot subject an applicant to consistency outside the listed and unlisted procedures. A Federal agency could notify the State agency of an application for an unlisted activity, and then the State agency could initiate the unlisted activity process.

Section 930.56(b) is moved to section 930.58(a)(2). This will consolidate all material on necessary data and information in one section. The last sentence of section 930.56 is added as State agencies need to be able to identify their enforceable policies and have an obligation to identify the applicable policies to Federal agencies and applicants. Also, since many management programs now contain substantial numbers of enforceable policies, it is more efficient and effective if States can identify the applicable policies to the applicants, rather than the applicant having to pick and choose from all the State policies.

Section 930.58 is modified to clarify information requirements and to consolidate language from other sections. Subsection 930.58(a)(1) (formerly section 930.56(b)) clarifies that the necessary data and information which applicants must provide to the State agency may include State permits or permit applications. One Federal agency commented that subsections (a)(1) and (a)(3) are duplicative and that the section should specify what an applicant should do if not satisfied that there is not adequate protection against disclosure of proprietary information. Two States requested various wording changes. One commenter believes that subsection (a)(2) should be deleted regarding State permits as necessary data and information. One commenter said that subsection (a)(2) and (c) should be integrated.

Subsections (a)(1) and (a)(3) are not duplicative. Subsection (a)(1) is identifying coastal effects and (a)(3) is an evaluation of effects in the context of enforceable policies. Subsection (c) allows applicants to disclose proprietary information if the applicant is satisfied that adequate protection against public disclosure exists. There is no conflict between subsections (a)(2) and (c) regarding proprietary information since (a)(2) is for ''required'' information and proprietary information is not required. NOAA has added language to subsection (a)(3) to clarify that it is the activity that must be consistent. These sections do not require an applicant to have all State permits. Management programs can, however, require that an applicant have the State permits in hand as the issuance of a State permit is, for some States, the means of demonstrating that an applicant is consistent with the underlying enforceable policies. States that require State permits conduct the federal consistency review at the same time that the State permit is being processed. This is not an obstacle as the six month CZMA review period is still in place.

Section 930.59. One commenter said that this section should require ''one stop shopping.'' The CZMA does not require one-stop-shopping for consistency. Also there are different procedures for different federal and State programs that may not lend themselves to one-stop shopping. In addition, some projects may be complicated long-term projects and information may not be available for later phases. Thus, the later phases would be subject to consistency at a later date.

Sections 930.60(a)(1), (2) and (3) clarify when the consistency time clock may begin; the consequences of an incomplete certification; and State agency notice requirements to the

applicant and the Federal agency. Where the applicant has submitted an incomplete certification and the State begins the consistency time clock, the State agency cannot later stop the time clock unless the applicant agrees. Section 930.60(a)(2) requires State agencies to notify the applicant and the Federal agency of the date when necessary certification or information deficiencies have been corrected, and the State agency's review has begun. Subsection (a)(3) allows States and applicants to mutually agree to alter the review time period.

One Federal agency commented that ''certification or information deficiencies'' be replaced with ''missing certification or information'' and that a State agency should be able to determine if information is missing in 15 days, not 30 days. One State commented that a State agency and Federal agency should be able to agree to extend the six-month time period. Another State commented that a State should be able to stop the six-month consistency time period. Several States commented that this section should address the issue of whether there is an active federal permit application. One commenter implied that under the current regulations the Federal agency determines completeness for consistency and that this is changed in the new rule.

NOAA agrees that subsection (a)(1) refers to incomplete certifications or information, and not the adequacy of the information. Thus, ''missing certification or information'' replaces ''deficiencies.'' NOAA believes that 30 days to determine completeness is reasonable given a project's complexity and some programs may need to check with networked agencies. This completeness check does not extend the six-month period, if submission is complete. Because this subpart affects applicants, the State agency and the Federal agency cannot change the review period without the applicant's agreement. The statute gives States six months to review. States cannot unilaterally stop, stay or otherwise alter the review period without an applicant's agreement. *See* section 930.51(f) regarding Federal agency acceptance and processing which applies to ''active'' federal applications. Current regulations do not allow the Federal agency to determine completeness for consistency review; only the State agency can make such a determination. If there is a disagreement, the parties can consult and seek mediation by NOAA. This is not changed in the revised regulations.

Section 930.61. One Federal agency commented that the rule should clarify who is responsible for conducting a public hearing. Two commenters offered word changes regarding ''reasonable.'' Three States commented that electronic notification should be allowed. The environmental groups commented that electronic notification should not be the single form of notification. One commenter encouraged NOAA to require public hearings.

NOAA has specified that the State agency is responsible for public hearings and has inserted ''reasonably'' and removed ''reasonable.'' This change is also made to section 930.78(a). Electronic notification cannot be the sole source of notification. This restriction is added to this section. *See* response to comments on section 930.42 for further discussion. The statute clearly provides that State agencies have the discretion to hold public hearings, thus NOAA cannot require public hearings. CZMA § 307(c)(3)(A).

Section 930.62 is deleted and part of it moved to section 930.61(a). The following section numbers in this subpart are renumbered. One State commented that NOAA should cross-reference section 930.60(a)(3). Another commenter encouraged NOAA to shorten the six-month review period. A cross reference is not needed and would be redundant. NOAA cannot shorten the six-month review period as it is set by statute, CZMA § 307(c)(3)A).

Section 930.63(a) (redesignated as section 930.62(a)) is amended to clarify that a State agency's objection must be received before or on the last day of the six-month review period.

Section 930.62(c). Two commenters said that Federal agencies should delay denying permits, rather than processing permits. NOAA disagrees. The term ''processing'' is correct. While States are conducting their consistency review, Federal agencies can, and should, continue processing the federal application (but not approve) to avoid prolonging the federal process if a State concurs.

Section 930.62(d) is moved from section 930.64(c). Two commenters said to change ''within three months'' to ''after three months.'' Several States commented that the three-month notification may be constructive, electronic, written or verbal.

NOAA has retained ''within'' three months as it is required by CZMA § 307(c)(3)(B). NOAA has also left the means of notification open as the State agency needs only to be able to document the actual notification. Notice must actual, not constructive notice.

Section 930.63. One commenter recommended that a local government coastal agency be allowed to object to a consistency certification, even if the State agency does not object. NOAA disagrees. Only the State agency can implement the State's federal consistency program. *See* sections 930.6 and 930.11(o).

Section 930.64(b) (redesignated as section 930.63(b)) is amended to clarify that State agency objections must be based on enforceable policies. Sections 930.63(b) and (d) are revised to clarify that identification of alternatives is an option for the State and to provide requirements on descriptions of alternatives if a State agency chooses to identify them. These changes recognize the fact that, even if an applicant proposes to adopt a State agency's alternative, the Federal agency cannot approve the project due to the State agency's objection. Thus, if an applicant wants the federal approval the applicant must consult with the State agency and the State agency must remove its objection, unless an applicant appeals to the Secretary and prevails.

Section 930.64(c) (redesignated as section 930.63(c)). One Federal agency commented that a State should not be able to object based on a lack of information, where the information is in addition to that required by section 930.58. NOAA disagrees. The information required by section 930.58 is the information needed to start the six-month review period. In most cases this information will provide the State agency with all information that the State agency needs for its review. However, the State agency may need additional information regarding coastal effects or the project's design during the period of the State agency's review. This information would allow the State to determine whether the activity will be consistent with the management program's enforceable policies.

Section 930.64(e) (redesignated as section 930.63(e)) is amended to clarify the notification of availability of the Secretarial override process. Since a concurrence with conditions may also become an objection, a conditional concurrence must also include similar appeal language. One State commented that this subsection refers to the CZMA as opposed to the CZMA as amended in 1990. NOAA disagrees. A reference to the ''CZMA'' is a reference to the existing statute. It is unnecessary to refer to various amendments.

Section 930.66 (redesignated as section 930.65) is amended to provide States with a more meaningful opportunity to address instances where the State agency claims that an activity

once found consistent or not affecting any coastal use or resource, is not being conducted as originally proposed and which will cause effects on a coastal use or resource substantially different than originally proposed. Previously, States could only request that the Federal agency take remedial action. If a Federal agency does not take remedial action the State agency can request that the Director find that the effects of the activity have substantially changed and require the applicant to submit an amended or new consistency certification and supporting information, or comply with the originally approved certification. This change mirrors the existing remedial action section of subpart E (*see* section 930.86) and, like section 930.86, is not expected to be used frequently. However, the procedure exists to ensure that federal license or permit activities continue to be conducted consistent with a management program.

Section 930.66 contains a supplemental coordination for proposed activities provision. *See* discussion of section 930.46.

Subpart E—Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities

Section 930.75(b) is deleted as redundant with the changes to section 930.76(b) and with section 930.58. One commenter urged that a local government coastal agency or a citizen could identify additional enforceable policies. NOAA disagrees. Only the State agency can provide a consistency response to an applicant, person or Federal agency and only the State agency can interpret the management program's enforceable policies, including local government policies that are part of the management program. *See* sections 930.6 and 930.11(o). A State agency can provide for public and local government input into its response.

Section 930.77 is deleted, because this information is redundant with section 930.58, which is referenced in section 930.76(b). The rest of the sections in this subpart are renumbered accordingly (with additional minor changes, mostly conforming with changes made in subpart D). One Federal agency commented that references to MMS regulations should be updated and noted that States should not be able to object based on a lack of information where the information is in addition to that required by section 930.58. One commenter recommended that a local government coastal agency be able to object.

The citations in section 930.77 have been updated. The information required by section 930.58 is the information needed to start the six-month review period. In most cases this information will provide the State agency with the information needed to complete its review. However, additional information may be needed regarding coastal effects or the project's design for purposes of the State agency's review.

Only the State agency can provide a consistency response to an applicant, person or Federal agency and only the State agency can interpret the management program's enforceable policies, including local government policies that are part of the management program. A State agency can provide for public and local government input into its interpretation or decision, but the local government cannot make the consistency decision. *See also* sections 930.6 and 930.11(o).

Section 930.78(b) is amended to require that the State agency's response must be received within the six-month response period.

Section 930.79(a). One Federal agency and one other commenter noted that the authority to require revisions to OCS plans rest with the Secretary of the Interior, not Commerce, through the OCSLA. NOAA agrees that the OCSLA and its implementing regulations provide specific directives regarding whether an amended plan is required and whether a consistency review is required for the amended plan.

Section 930.81. One Federal agency commented that language from section 930.62 regarding Federal agency processing should be repeated in subsection (b). One commenter voiced objection to ''phasing'' of OCS projects. Repeating section 930.62 is not necessary in this section since the procedural requirements of subpart D apply unless modified by subpart E. The section provides for sufficient State agency control of various OCS permits to prevent unwanted ''phasing'' as suggested by the comment. Thus, it is reasonable and fair to allow a person to obtain a permit with which the State agency has concurred.

Section 930.82. One Federal agency commented that the CZMA does not authorize NOAA to require OCS plan amendments. NOAA disagrees. This is an existing regulatory requirement and is mandated by the CZMA, CZMA § 307(c)(3)(B). Further, this section was clarified by adding that an amended plan is required, if the person still intends to proceed with the activity.

Sections 930.83(b)–(e) (currently section 930.84(b)–(e)) are deleted since they are unnecessary and are replaced by the new reference in revised section 930.83. One Federal agency commented that the CZMA does not authorize NOAA to require plan amendments. One commenter recommended using a six-month review period instead of three months for plan amendments. NOAA disagrees. This is an existing regulatory requirement and is mandated by CZMA § 307(c)(3)(B). Further, section 930.82 was clarified by adding that an amended plan is required, if the person still intends to proceed with the activity. The three-month review period is required by the CZMA, and cannot be extended by rule to six months. *See* CZMA § 307(c)(3)(B).

Section 930.85. One Federal agency commented that the CZMA does not authorize NOAA to require a new or amended OCS plan. NOAA disagrees. Unlike the previous section where this comment was raised, section 930.82, the CZMA specifically requires an ''amended'' or ''new'' plan be submitted to the Secretary of the Interior. CZMA § 307(c)(3)(B). Section 930.85 is an existing section that facilitates such an occurrence.

Subpart F—Consistency for Federal Assistance to State and Local Governments

Section 930.94 is amended to clarify that all federal assistance activities that affect any coastal use or resource are subject to the consistency requirement. While the intergovernmental review process is the preferred method for notifying the State agency and for State agency review, the intergovernmental review process may not provide notification for all federal assistance activities subject to the consistency requirement. Sections 930.94(b) and 930.95 provide methods to ensure adequate notification and review, by specifying a listed and unlisted procedure. One State commented that subsection (a) should clarify how this subpart applies to applications for programmatic funding. Two States commented that the subpart should clarify that a State can object for lack of information. One Federal agency commented that subsection (b)(2) should be deleted, and subsection (b)(1) amended to reflect State flexibility in determining which Federal assistance activities will be subject to consistency through the listing procedure.

While it is not clear what the distinction is between programmatic and individual funding, the same consistency requirements would apply: effects test and consistency with enforceable policies. The basis for State agency objections under this subpart are the same as that for subpart D, section

930.63, as referenced in section 930.96(b). NOAA agrees that subsection (b)(2) be deleted and (b)(1) amended.

Section 930.94(c) is added to conform to the statutory requirement that the applicant agency provide an evaluation of consistency with enforceable policies. *See* CZMA § 307(d).

Sections 930.96(c)–(e) are deleted since the reference to section 930.63 in section 930.63(b) eliminates the need for these subsections. Two commenters recommended that the section clarify that Federal agencies not delay processing an application, ''as long as they do not approve'' the application, and that language regarding agreeing on conditions may be out of date due to section 930.4. One State commented that a time period for State review needs to be specified.

NOAA agrees that language should be added so that Federal agencies do not inadvertently approve funding pending State agency decisions. Section 930.96(a)(2) is still applicable, even with the addition of section 930.4. State agencies, applicant agencies and Federal agencies should always attempt to agree on conditions that meet both State and Federal requirements. This will provide the applicant agency with greater assurance of State and Federal approval. NOAA agrees that section 930.98(b) is redundant with section 930.97. Thus, section 930.98(b) is deleted. CZMA § 307(d) provides that review periods for federal assistance activities shall be determined pursuant to State intergovernmental review periods. Thus, the regulations do not specify a time period—that is left up to individual State law.

The unlisted activity procedure in section 930.98 follows the unlisted activity procedures found at section 930.54, except that Director approval is not required, because the State agency, through its monitoring and review of federal assistance activities, determines if coastal effects are reasonably foreseeable. Section 930.98(b) is deleted as it is redundant with section 930.97.

Section 930.100 is amended to provide States with more meaningful opportunity to address remedial action for previously reviewed activities. *See* discussion of section 930.65.

Section 930.101 contains a supplemental coordination for proposed activities provision. *See* discussion of section 930.46.

Subpart G—Secretarial Mediation

Only minor changes were made to subpart G. Subpart G provides a process for Federal agencies and coastal States to request that the Secretary of Commerce mediate serious disputes regarding the federal consistency requirements. Subpart G also provides for more informal mediation by OCRM. Both Secretarial mediation and OCRM mediation require the participation of both agencies and are non-binding.

Section 930.110. One commenter said that including the word ''negotiator'' could be perceived as an advocate for the Federal agency. NOAA has deleted reference to ''negotiation.'' It was not the intent of this language to change NOAA's role, but rather to refer to the next section on informal negotiations. However, to clarify NOAA's mediation role, ''negotiation'' is removed from section 930.110, the title of section 930.111 is changed to ''OCRM mediation,'' and the title of section 930.112 is changed to ''Request for Secretarial mediation.''

Section 930.113(a). One commenter said that public hearings should be required for Secretarial mediation. NOAA agrees. For Secretarial mediation the CZMA requires that the Secretary hold ''public hearings which shall be conducted in the local area concerned.'' CZMA § 307(h)(2). Thus, the language from the original regulations is retained.

Subpart H—Appeal to the Secretary for Review Related to the Objectives of the Act and National Security Interests

Pursuant to section 307 of the Act, no Federal agency may issue a license or permit for an activity until an affected coastal State has concurred that the activity will be conducted in a manner consistent with the management program unless the Secretary, on his own initiative or on appeal by the applicant, finds that the activity is consistent with the objectives of the Act or is otherwise necessary in the interest of national security. Subpart H sets forth the procedures applicable to such appeals and the requirements for such findings by the Secretary.

Changes were made to section 930.121(a) and (b) to ensure that the Secretary overrides a State's objection only where the activity significantly or substantially furthers the national interest and that interest outweighs the adverse coastal effects of the activity. Several commenters noted that the changes would improve the appeal process. One commenter said that States are not required to undertake consistency reviews, and said that the criteria needs to be changed so that the Secretary is not substituting his judgement for that of the State when no compelling national interest is at stake, and that there must be a strong presumption in favor of upholding the State's decision.

NOAA agrees that changes to this section are necessary to clarify the criteria established for the Secretarial override of State objections to consistency certifications. However, NOAA disagrees that the regulations need wholesale revision. The CZMA directs the Secretary to consider whether an activity that a State has determined to be inconsistent with the enforceable policies of its management program is nonetheless consistent with the objectives of the CZMA or otherwise necessary in the interest of national security. An activity is consistent with the objectives of the CZMA only if it satisfies *each* of the three (previously four) elements of section 930.121. The Secretary's review is an independent assessment of the proposed activity and whether the proposed activity meets the objectives of the CZMA or is necessary in the interest of national security. The Secretary does not review the judgement of the State agency other than to ensure that the State's objection was properly made within the requirements of subparts D, E, F and I. Although one of the central goals of the CZMA is to encourage State management of coastal resources, the Secretary's review is available to ensure that proposals that further the national objectives articulated in the Act may be allowed to proceed notwithstanding their inconsistency with the enforceable policies of a management program. *See also* response to comment on section 930.3.

Section 930.121(a). Several States and the environmental groups commented that the phrase ''one or more of'' the CZMA objectives is inconsistent with the statutory language and is a mere checklist approach resulting in the appellant automatically satisfying this element. The regulatory language should refer to all the objectives. The States also commented that subsection (c) should be deleted. The States also commented that the phrase ''de minimis'' did not convey the importance of having the Secretary override a State's objection only where there is a national interest in the CZMA objective being addressed. One Federal agency commented that ''de minimis'' was confusing.

NOAA agrees with the majority of commenters that Secretarial overrides should occur only where a project furthers the national interest in a significant or substantial way. Congress acknowledged a national objective in the ''effective management, beneficial use, and development of the coastal zone'' and specifically chose the States as the best vehicle to further this national interest. CZMA § 302(a). The

language and structure of §§ 302 and 303 make clear that Congress chose the States, in partnership with the federal government, to further the national interest ''to preserve, protect, develop and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations.'' CZMA § 303(1). The Secretarial review function is not intended to upend the State management structure by replacing the State agency's decision with the Secretary's, for projects which are essentially local government land use decisions and which do not significantly or substantially further the national interest in the CZMA's objectives. The purpose of the Secretary's review is to ensure that projects which do significantly or substantially further the national interest in the CZMA's objectives, and where the national interest outweighs impacts to coastal uses and resources, may be federally approved notwithstanding their inconsistency with the enforceable policies of a management program. NOAA acknowledges the views of several commenters that the application of NOAA's regulations has presented the Secretary with proposed activities that, while falling under the CZMA's objectives, did not significantly or substantially contribute to the national interest in the CZMA objectives. This application of the regulations has created the appearance that the Secretary overlooked the intent of the Act to support the States' use of section 307 to require that federal license or permit activities be consistent with federally approved management programs. The proposed rule attempted to address this concern and the final rule offers the further clarification requested by all commenters.

The proposed rule introduced the concept that a proposed activity have more than a *de minimis* relationship to the national objectives articulated in §§ 302 and 303 of the Act. As stated in the preamble to the proposed rule, the purpose of the change was to allow the Secretary to focus her review on activities of national concern not local land use issues with a minimal connection to the national goals of coastal resource management. 65 Fed. Reg. 20279. However, as all of the commenters pointed out, the use of de minimis as a descriptor was insufficient to convey the need to focus the Secretary's review on proposed activities of a national import.

In response to these comments, NOAA has removed the phrase de minimis and replaced it with the phrase ''furthers the national interest * * * in a significant or substantial manner'' with the intent of emphasizing the need for an appellant to demonstrate that the proposed activity is of such import to the national goals for coastal resource management that, despite the will of State and local government decision makers, the Secretary of Commerce should independently review the proposed activity to determine its consistency with the CZMA. The final rule uses the same phrase as that contained in 930.121(b), ''national interest,'' instead of ''one or more of the competing objectives and purposes'' to clarify the necessity that a proposed activity have a national component to its furtherance of the policies and objectives of the Act.

By adding the words significantly and substantially to describe the degree to which the proposed activity advances the national interest, NOAA intends to emphasize the importance of the relationship between the activity and the national perspective of the goals articulated in §§ 302 and 303. The dictionary definition of substantial includes ''considerable in importance, value, degree, amount or extent.'' The American Heritage Dictionary, 1976. In other words, the activity must be more than related to one of the category of objectives described in §§ 302 or 303—it must contribute to the national achievement of those objectives in an important way or to a degree that has a value or impact on a national scale. The use of the word significant (which is defined as ''important, notable, valuable'') is added to convey NOAA's view that a project can be of national import without being quantifiably large in scale or impact on the national economy.

Requiring that a proposed activity demonstrate that it significantly or substantially furthers the national interest creates the appropriate relationship between the central objective of the CZMA to encourage State management of coastal resources and the Secretary's role in ensuring the national interest is fully considered in the implementation of management programs. To determine whether a project significantly or substantially furthers the national interest, NOAA encourages appellants and States to consider three factors: (1) The degree to which the activity furthers the national interest; (2) the nature or importance of the national interest furthered as articulated in the CZMA; and (3) the extent to which the proposed activity is coastal dependent.

An example of an activity that significantly or substantially furthers the national interest is the siting of energy facilities or OCS oil and gas development. Such activities are coastal dependent industries with economic implications beyond the immediate locality in which they are located. Some activities, such as a house, a restaurant, or a food store, may contribute to the economy of the coastal municipality or State, but are not coastal dependent and may not provide significant or substantial economic contributions to the national interest furthered by the objectives in §§ 302 and 303. It may be more difficult to discern whether other activities significantly or substantially further the national interest. For instance, a marina facility is coastal dependent, furthers the goals of the CZMA in public access and recreation on our coasts, but its economic effects may be purely local. Conversely, the addition of a runway to an international airport may significantly enhance the national economy while not being coastal dependent. Whether a project significantly or substantially furthers the national interest in the objectives of §§ 302 and 303, especially for the latter types of projects (the marina and airport examples), will depend on the Secretary's decision record.

Section 930.121(b). Several States commented that the national interest in subsection (b) be a compelling national interest and one State commented that the revised language weakens the current language. One State did understand NOAA's change by commenting that under the current regulation, subsection (b) can be read as meaning that if the State interest, or effects to coastal resources, and the national interest are equal, then the national interest in the activity will take precedence.

NOAA views many of the comments concerning the balancing of the national interest and the effects on coastal uses and resources to have been addressed by the change to section 930.121(a) requiring the proposed activity to further the national interest in a significant or substantial manner. *See* NOAA response above. In the final rule, NOAA reorganized the clauses in the proposed rule to address the concern that section 930.121(b) is grammatically ambiguous. It is not NOAA's intent that the cumulative benefits of a proposed activity be weighed against coastal effects. Not only could this lead to the consideration of an endless stream of benefits from the flow of commerce, it could diminish one of the essential purposes of the CZMA to assist States in planning, restoring and conserving coastal resources. The reordered language is intended to make clear that

to override a State's objection the Secretary must find that the national interest found to be furthered in a significant or substantial manner in section 930.121(a), outweighs the potential individual or cumulative effects the proposed activity may have on coastal uses and resources.

Section 930.121(c). Several States and others commented that this section should be deleted, because any activity must comply with the requirements of the Clean Air and Water Acts. NOAA agrees. Removal of this criteria does not alter in any way the Secretary's obligation to evaluate and consider the potential adverse effects of a proposed activity on coastal air and water resources. NOAA will continue to seek the views and comments of the expert agencies charged with implementation of these statutes. The deletion of this criterion simply removes the obligation of the Secretary to develop an administrative finding that a proposed activity will or will not meet the requirements of the Clean Air Act and Clean Water Act. As the commenters point out, that obligation is fulfilled by other State and Federal agencies. As provided for in CZMA § 307(f), States must include water pollution control and air pollution control requirements in their management programs and those requirements may form the basis of a State objection.

Section 930.121(d) was amended to clarify the determination by the Secretary of the availability of alternatives. Currently, under the other elements of section 930.121, the Secretary may consider many factors when determining whether an appellant has met a particular element. Regarding the element on alternatives, there is confusion as to when alternatives may be raised, the consequences of a State agency not providing alternatives or when it issues its objection, and the level of specificity that the State agency needs to provide to satisfy the element on appeal. The changes to section 930.121(d) reflect the independent basis of the Secretary's decision by not restricting the scope of the Secretary's review. These changes will ensure that the Secretary's findings regarding alternatives will not be restricted, but will be informed and based on the Secretary's independent administrative record for each case. In this way, both the State and appellant will be able to provide the Secretary with information on whether an alternative is reasonable and described with sufficient specificity that might not have been available when the State issued its objection. Several States commented that this section should require that the activity can only be done at the proposed location or that alternatives for other uses of the property be considered. One Federal agency commented that the Federal permitting agency's opinion be given considerable weight when determining whether an alternative is reasonable.

NOAA disagrees with the comments. NOAA intended this provision to make clear that there is a broad range of sources from which the Secretary may draw his examination of the alternatives to the activity as proposed. The Secretary is limited in consideration to reasonable alternatives that meet in whole or at least in part the appellant's purpose. The Secretary does not consider alternatives that are unrelated to or do not meet in some reasonable way the appellant's objective in proposing the activity. NOAA does not intend this provision to deter a State, or other parties, from proposing to move the proposed activity to another site to make better use of existing infrastructure. Nevertheless, alternatives must be ''reasonable.'' NOAA disagrees that the new rule language diminishes or in any way affects the weight the Secretary accords the comments of Federal agencies.

Section 930.125 is revised to make it consistent with the 1990 amendments to the CZMA. The changes include the requirement that an appellant pay a filing fee to the Secretary.

Section 930.126 codifies and explains the statutory requirement for the Secretary to collect fees from appellants to recover the costs of administering and processing appeals. These fees are in addition to the filing fees. *See* CZMA § 307(i).

Section 930.127 clarifies when an appellant must submit supporting data and information. This requirement is necessary so that the Secretary can meet new time limits placed on the Secretary by the 1996 amendments to the CZMA. One commenter urged that rather than listing NOAA's address, it would be better to note a source for finding the correct address. NOAA disagrees. NOAA provides the address of the Assistant General Counsel for Ocean Services for the benefit of appellants using the regulations to form and file their appeals to the Secretary. This office has been in the same location for seven years, and if it moves, mail will be forwarded and the Code of Federal Regulations may be updated in due course.

Section 930.129(a)(6). One commenter objected to subsection (a)(6) regarding dismissal of appeals due to an improperly lodged State objection. One Federal agency commented that this language was confusing and should be reworded such that if a State improperly lodges its objection, the Secretary would rule in favor of the appellant. NOAA agrees that the language is confusing and has modified the rule accordingly. In addition, this provision is now a separate provision to illustrate its difference with other grounds for dismissal. The purpose of this provision is improve the administration of the appeals process by addressing procedural deficiencies in the issuance of the State's objection early in the process before the parties and the Secretary have invested significant resources in the development of an administrative record. A State's objection is not properly issued if it fails to comply with the requirements of section 307 of the Act or with the regulations contained in subparts D, E, F and I. To dismiss an objection because the State has not followed the proper procedures is actually to override the State's objection on procedural grounds. In the event an appellant claims that a State objection has not been properly issued, the Secretary may review the question as a threshold matter and upon finding that the objection was not properly issued, may override the State's objection.

Section 930.129(d). One Federal agency commented that, while supporting this provision to remand significant new information to the State agency, a three month review period be imposed. One commenter said that this subsection would lengthen the process and be inconsistent with the 1996 CZMA amendments. One State commented that the State should have the full statutory time of six months to review significant new information.

The purpose of this part is to ensure that a State agency has an opportunity to review significant new information to determine whether in light of that new information a proposed project is consistent with the enforceable policies of its management program. The Secretarial review follows the requirements of section 930.121 and does not examine the proposed project for consistency with the management program. When new information is developed that is significant to issues raised by the State, it is appropriate for the Secretary to request the State to determine whether its objection continues or whether in light of the new information the proposed activity is consistent with the management program and the State objection can be removed. Increasingly, appeals to the Secretary result in the development of extensive administrative records containing information never reviewed by the State agency. This provision and

those in section 930.129(b) and (c) are intended to ensure that a State agency has an opportunity to reexamine a proposed activity when significant new information is developed or provided. In addition, NOAA added a time limitation on the remand to the State to a period of three (3) months, since the remand to the State is not another consistency review. Three months is sufficient time for the State agency to review the significant new material and determine if its objection still stands.

Section 930.131(a)(2). One State commented that the Secretary should not have the authority to override a State's objection when the State objected for lack of information. NOAA disagrees. The Secretary may override a State objection based on lack of information if she finds the administrative record before her provides sufficient information to make the findings required by section 930.121. There is no authority to the contrary. This section is moved to section 930.127(d).

Section 930.131 is amended to clarify the procedures applicable to reviews initiated by the secretary on his/her own initiative. Section 930.132(b) is superseded by section 8 of the Coastal Zone Protection Act of 1996, Pub. L. 104–150. Section 8 created a new § 319 of the CZMA concerning the timing of appeals which is reflected in new section 930.130.

Sections 930.133 and 134 are deleted, because these provisions are included in other sections of subpart H.

Subpart I—Assistant Administrator Reporting and Review

Existing subpart I is deleted. This subpart has never been used, and there are other existing CZMA mechanisms for reporting and review: oversight and monitoring under CZMA section 306, evaluations under CZMA § 312, appeals under CZMA § 307, and unlisted activity review approvals.

In addition, section 930.145 is revised and moved to section 930.3.

Proposed Subpart I—Consistency of Federal Activities Having Interstate Coastal Effects

The CZARA clarified that the federal consistency trigger is coastal effects, regardless of the geographic location of the federal activity. *See* CZMA § 307; Conference Report at 970–972. Thus, federal consistency applies to all relevant federal actions, even when they occur outside the State's coastal zone and in another State. For example, State A may review a federal permit application for an activity occurring wholly within State B if State A has a federally approved coastal management program and the activity will have coastal effects. An example of this type of activity is the placement of a sewage outfall pipe in State B's waters that results in impacts to shellfish harvesting waters in State A. NOAA believes that regulations are needed so that the application of interstate consistency is carried out in a predictable, reasonable, and efficient manner. NOAA is specifically addressing interstate consistency to encourage neighboring States to cooperate in dealing with common resource management issues, and to provide States, permitting agencies, and the public with a more predictable application of the consistency requirement to these activities. Interstate resource management issues are best resolved on a cooperative, proactive basis.

Section 930.151. Two States and one other commenter commented that the CZMA does not authorize interstate consistency. One State commented that section 930.151 should be amended to include all federal activities to take into account activities in the Exclusive Economic Zone.

NOAA strongly disagrees with the comments stating that the CZMA does not authorize interstate consistency. The Secretary has previously made clear that the CZMA authorizes interstate consistency, upholding NOAA's long-standing position. For a detailed analysis on the CZMA and interstate consistency which responds to and refutes all the arguments raised by the commenters, see Secretary of Commerce, Decision and Findings in the Consistency Appeal of the Virginia Electric and Power Company from an Objection by the North Carolina Department of Environment, Health and Natural Resources, at vi and 9–18 (May 19, 1994), upheld in *North Carolina* v. *Brown,* Civil Action No. 94–1569 (TFH) (D.D.C. Sep. 27, 1994). This decision was based on a 1989 NOAA General Counsel opinion, the language of the CZMA and the Conference Report. *See also* 136 Cong. Rec. H 8077 (Sep. 26, 1990). At the time of the Secretary's 1994 decision, previous statements by the Army Corps of Engineers and the U.S. Department of Justice (Justice) that were contrary to NOAA's position were reconciled when Justice deferred to NOAA's interpretation of the CZMA regarding the application of consistency to an activity occurring in another State. Justice stated that, ''we believe the department of Commerce is the agency with statutorily assigned responsibilities for administering the CZMA and therefore Commerce has the authority in the first instance to interpret the Act.'' Letter from Webster L. Hubbell, Associate Attorney General, Justice, to Carol C. Darr, General Counsel, Commerce (Dec. 14, 1993).

Generally, an activity, regardless of its location, that requires federal approval is subject to the CZMA § 307(c)(3)(A). The CZMA requires that: ''any applicant for a required Federal license or permit to conduct an activity, in or outside of the coastal zone, affecting any land or water use or natural resource of the coastal zone of that state shall * * * [certify] that the proposed activity complies with the enforceable policies of the state's approved program * * *.'' CZMA § 307(c)(3)(A). Thus, federal consistency is triggered when an activity affects the coastal zone. Project location and political boundaries are, generally, irrelevant. The procedural and substantive dictates that allow the reviewing State to review an activity are the same, whether the activity is within its State boundaries, but outside the coastal zone; or located wholly in another State. Interstate consistency does not expand a coastal State's jurisdiction or affect the sovereignty of other States. Federal consistency applies only to federal actions, not State actions. If State A determines that an activity in State B would affect its coastal resources, but no federal permit or other federal action is required to undertake the activity, State A does not have any authority under the CZMA to review that activity. The CZMA also, even when there is a federal consistency trigger, does not give coastal States the authority to review the application of the laws, regulations, or policies of any other State. The CZMA only allows a State agency to review the federal approval of an activity.

This subpart deals with ''interstate'' activities. Thus, Federal agency activities or federal license or permit activities occurring in Federal waters are covered under subpart C and D.

Sections 930.153 and 154. One State commented that if a State followed the listing procedures why would the unlisted procedure be needed. One State objected to having to list interstate activities. One Federal agency and one State noted that the listing requirements are essential and fair.

The unlisted activity language is included in section 930.154(e) for two reasons: (1) To clarify that the unlisted procedure is not available until the State first goes through the listing procedure for those permits it wants to review, and (2) to clarify that the unlisted activity procedure is available, even after going through the listing procedure to ensure that the State agency has the opportunity to review activities with

coastal effects that were not foreseen at the time of listing.

A consistency list is a reasonable interpretation of the statute as a means of providing an orderly and predictable process. The proposed interstate consistency notification/consultation/listing procedure does not add a new program requirement. States are already required to have such lists and to define the geographic area outside the coastal zone where the lists will apply. Few States have described this geographic area. To meet the interstate requirement a State may choose to not change its list, but only to add an interstate geographic scope. The proposed procedure also does not mean that a State cannot review a type of federal activity; it means that the State must first consult with neighboring States and notify potential interstate applicants and federal agencies. This consultation procedure does not require that the State prove coastal effects or that neighboring States concur with the listing and geographic location description. Thus, NOAA does not believe that meeting this requirement is burdensome. NOAA believes that it is important that States must first go through the notification and listing procedure. Only then can a State review an interstate activity. This is necessary due to the often controversial nature of reviewing interstate activities. This will help ensure that interstate consistency reviews are carried out in a reliable, predictable and efficient manner, with notification to individuals in other States potentially subject to consistency review.

Sections 930.155(c), 156(a) and (b). One Federal agency commented that there is no statutory requirement for Federal agencies to coordinate with States in developing a proposed activity, beyond the coordination required under CZMA § 307. NOAA agrees. Sections 930.155(c) and 156(a) are deleted as other subparts provide the requirements for coordination through consistency determinations and consistency certifications.

VIII. Miscellaneous Rulemaking Requirements

Executive Order 12372: Intergovernmental Review

This program is subject to Executive Order 12372.

Executive Order 13132: Federalism Assessment

NOAA concluded that this regulatory action is consistent with federalism principles, criteria, and requirements stated in Executive Order 13132. The changes in the federal consistency regulations facilitate Federal agency coordination with coastal States, and ensure that federal actions affecting any coastal use or resource are consistent with the enforceable policies of management programs. The CZMA and these revised regulations promote the principles of federalism articulated in Executive Order 13132 by granting the States a qualified right to review certain federal activities that affect the land and water uses or natural resources of State coastal zones. CZMA § 307 and these regulations effectively transfer power from Federal agencies to State agencies when Federal agencies propose activities or applicants for federal licenses or permits propose to undertake activities affecting State coastal uses or resources. Through the CZMA, Federal agencies carry out their activities in a manner that is consistent to the maximum extent practicable with federally approved management programs and licensees and permittees to be fully consistent with the management programs. The CZMA and these implementing regulations, rather than preempting a State provide a mechanism for it to object to federal activities that are not consistent with the management program. A State objection prevents the issuance of the federal permit or license, unless the Secretary of Commerce overrides the objection. Because the CZMA and these regulations promote the principles of federalism and enhance State authorities, no federalism assessment need be prepared.

Executive Order 12866: Regulatory Planning and Review

This regulatory action has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration, when this rule was proposed, that the rule, if adopted, would not have a significant impact on a substantial number of small entities. One comment was received regarding the substance of that certification. One Federal agency commented that there may be additional factors, which may not have been adequately considered, that could have potential impacts on small businesses, and asked that NOAA consider this information. In particular, the infrastructure needed to explore and develop the OCS requires planning in advance of an expected drilling or construction date. For example, certain types of infrastructure (such as specialized drilling rigs) are in limited supply, requiring that contracts be signed well before permitted activities commence. Many of the changes contemplated in the proposed rule involve new procedures, extensions of time for consistency review, and additional information collection and reporting requirements during the consistency review and appeals processes. These changes may cause unpredictability that could affect a substantial number of small businesses operating on the OCS. Currently, four out of five people who work on the OCS work for contractors, not large oil companies. Many of these contractors employ fewer than 500 people. The issues raised by the commenter were considered in the analysis that provided the factual basis for the certification. With respect to the issues raised in the comment, the analysis found that the changes contained in the proposed, and this final, rule regarding information, appeal and time requirements were minor. The conclusion in the analysis was that these changes should not have a significant economic impact on contractors for the applicant or cause unpredictability since these requirements are, for the most part, already part of doing business under the CZMA federal consistency requirement. Accordingly, the basis for the certification has not changed and neither an initial nor a final Regulatory Flexibility Analysis was prepared.

Paperwork Reduction Act

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0411. Public reporting burden for this collection of information is estimated to average the following times per response: 8 hours for a State objection and concurrence to consistency certifications or determinations; 12 hours for a State request to review unlisted activities; 1 hour for a public notice requirement; 12 hours for a request for remedial action and supplemental review; 1 hour for a listing notice; 6 hours for a request for Secretarial mediation; and 200 hours for an average appeal to the Secretary of Commerce. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for

reducing the burden, to NOAA and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a valid OMB Control Number.

National Environmental Policy Act

NOAA has concluded that this regulatory action is categorically excluded from NEPA as not having the potential for significant impact on the quality of the human environment pursuant to NAO 216–6.03c3(i). Therefore, an environmental impact statement is not required.

List of Subjects in 15 CFR part 930

Administrative practice and procedure, Coastal zone, Reporting and record keeping requirements.

Dated: November 30, 2000.

John Oliver,

Chief Financial Officer, National Ocean Service.

For the reasons set out in the preamble, NOAA has revised 15 CFR part 930 to read:

Final Revision of 15 C.F.R. part 930

PART 930—FEDERAL CONSISTENCY WITH APPROVED COASTAL MANAGEMENT PROGRAMS

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Authority: 16 U.S.C. 1451 *et seq.*

Subpart A—General Information

§ 930.1 Overall objectives.

The objectives of this part are:

(a) To describe the obligations of all parties who are required to comply with the federal consistency requirement of the Coastal Zone Management Act;

(b) To implement the federal consistency requirement in a manner which strikes a balance between the need to ensure consistency for federal actions affecting any coastal use or resource with the enforceable policies of approved management programs and the importance of federal activities;

(c) To provide flexible procedures which foster intergovernmental cooperation and minimize duplicative effort and unnecessary delay, while making certain that the objectives of the federal consistency requirement of the Act are satisfied. Federal agencies, State agencies, and applicants should coordinate as early as possible in developing a proposed federal action, and may mutually agree to intergovernmental coordination efforts to meet the requirements of these regulations, provided that public participation requirements are met and applicable State management program enforceable policies are considered.

(d) To interpret significant terms in the Act and this part;

(e) To provide procedures to make certain that all Federal agency and State agency consistency decisions are directly related to the enforceable policies of approved management programs;

(f) To provide procedures which the Secretary, in cooperation with the Executive Office of the President, may use to mediate serious disagreements which arise between Federal and State agencies during the administration of approved management programs; and

(g) To provide procedures which permit the Secretary to review federal license or permit activities, or federal assistance activities, to determine whether they are consistent with the objectives or purposes of the Act, or are necessary in the interest of national security.

§ 930.2 Public participation.

State management programs shall provide an opportunity for public participation in the State agency's review of a Federal agency's consistency determination or an applicant's or person's consistency certification.

§ 930.3 Review of the implementation of the federal consistency requirement.

As part of the responsibility to conduct a continuing review of approved management programs, the Director of the Office of Ocean and Coastal Resource Management (Director) shall review the performance of each State's implementation of the federal consistency requirement. The Director shall evaluate instances where a State agency is believed to have either failed to object to inconsistent federal actions, or improperly objected to consistent federal actions. This evaluation shall be incorporated within the Director's general efforts to ascertain instances where a State has not adhered to its approved management program and such lack of adherence is not justified.

§ 930.4 Conditional concurrences

(a) Federal agencies, applicants, persons and applicant agencies should cooperate with State agencies to develop conditions that, if agreed to during the State agency's consistency review period and included in a Federal agency's final decision under subpart C or in a Federal agency's approval under subparts D, E, F or I of this part, would allow the State agency to concur with the federal action. If instead a State agency issues a conditional concurrence:

(1) The State agency shall include in its concurrence letter the conditions which must be satisfied, an explanation of why the conditions are necessary to ensure consistency with specific enforceable policies of the management program, and an identification of the specific enforceable policies. The State agency's concurrence letter shall also inform the parties that if the requirements of paragraphs (a)(1) through (3) of the section are not met, then all parties shall treat the State agency's conditional concurrence letter as an objection pursuant to the applicable subpart and notify, pursuant to § 930.63(e), applicants, persons and applicant agencies of the opportunity to appeal the State agency's objection to the Secretary of Commerce within 30 days after receipt of the State agency's conditional concurrence/objection or 30 days after receiving notice from the Federal agency that the application will not be approved as amended by the State agency's conditions; and

(2) The Federal agency (for subpart C), applicant (for subparts D and I), person (for subpart E) or applicant agency (for subpart F) shall modify the applicable plan, project proposal, or application to the Federal agency pursuant to the State agency's conditions. The Federal agency, applicant, person or applicant agency shall immediately notify the State agency if the State agency's conditions are not acceptable; and

(3) The Federal agency (for subparts D, E, F and I) shall approve the amended application (with the State agency's conditions). The Federal agency shall immediately notify the State agency and applicant or applicant agency if the Federal agency will not approve the application as amended by the State agency's conditions.

(b) If the requirements of paragraphs (a)(1) through (3) of this section are not met, then all parties shall treat the State agency's conditional concurrence as an objection pursuant to the applicable subpart.

§ 930.5 State enforcement action.

The regulations in this part are not intended in any way to alter or limit other legal remedies, including judicial review or State enforcement, otherwise available. State agencies and Federal agencies should first use the various remedial action and mediation sections of this part to resolve their differences or to enforce State agency concurrences or objections.

§ 930.6 State agency responsibility.

(a) This section describes the responsibilities of the ''State agency'' described in § 930.11(o). A designated State agency is required to uniformly and comprehensively apply the enforceable policies of the State's management program, efficiently coordinate all State coastal management requirements, and to provide a single point of contact for Federal agencies and the public to discuss consistency issues. Any appointment by the State agency of the State's consistency responsibilities to a designee agency must be described in the State's management program. In the absence of such description, all consistency determinations, consistency certifications and federal assistance proposals shall be sent to and reviewed by the State agency. A State may have two State agencies designated pursuant to § 306(d)(6) of the Act where the State has two geographically separate federally-approved management programs.

(b) The State agency is responsible for commenting on and concurring with or objecting to Federal agency consistency determinations and negative determinations (*see* subpart C of this part), consistency certifications for federal licenses, permits, and Outer Continental Shelf plans (*see* subparts D, E and I of this part), and reviewing the consistency of federal assistance activities proposed by applicant agencies (*see* subpart F of this part). The State agency shall be responsible for securing necessary review and comment from other State, regional, or local government agencies, and, where applicable, the public. Thereafter, only the State agency is authorized to comment officially on or concur with or object to a federal consistency determination or negative determination, a consistency certification, or determine the

consistency of a proposed federal assistance activity.

(c) If described in a State's management program, the issuance or denial of relevant State permits can constitute the State agency's consistency concurrence or objection if the State agency ensures that the State permitting agencies or the State agency review individual projects to ensure consistency with all applicable State management program policies and that applicable public participation requirements are met. The State agency shall monitor such permits issued by another State agency.

Subpart B—General Definitions

§ 930.10 Index to definitions for terms defined in part 930.

Term	Section
Act	930.11(a)
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Applicant	930.52
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Coastal zone	930.11(e)
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Consistent with the objectives or purposes of the Act.	930.121
Development project	930.31(b)
Director	930.11(f)
Effect on any coastal use or resource.	930.11(g)
Enforceable policy	930.11(h)
Executive Office of the President	930.11(i)
Failure substantially to comply with an OCS plan.	930.86(d)
Federal agency	930.11(j)
Federal agency activity	930.31
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Federal license or permit	930.51
Federal license or permit activity described in detail.	930.71
Interstate coastal effect	930.151
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Necessary in the interest of national security.	930.122
OCS plan	930.73
OCRM	930.11(l)
Person	930.72
Secretary	930.11(m)
Section	930.11(n)
State agency	930.11(o)

§ 930.11 Definitions.

(a) *Act.* The term ''Act'' means the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451–1464).

(b) *Any coastal use or resource.* The phrase ''any coastal use or resource'' means any land or water use or natural resource of the coastal zone. Land and water uses, or coastal uses, are defined in sections 304(10) and (18) of the act, respectively, and include, but are not limited to, public access, recreation, fishing, historic or cultural preservation, development, hazards management, marinas and floodplain management, scenic and aesthetic enjoyment, and resource creation or restoration projects. Natural resources include biological or physical resources that are found within a State's coastal zone on a regular or cyclical basis. Biological and physical resources include, but are not limited to, air, tidal and nontidal wetlands, ocean waters, estuaries, rivers, streams, lakes, aquifers, submerged aquatic vegetation, land, plants, trees, minerals, fish, shellfish, invertebrates, amphibians, birds, mammals, reptiles, and coastal resources of national significance. Coastal uses and resources also includes uses and resources appropriately described in a management program.

(c) *Assistant Administrator.* The term ''Assistant Administrator'' means the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA.

(d) *Associated facilities.* The term ''associated facilities'' means all proposed facilities which are specifically designed, located, constructed, operated, adapted, or otherwise used, in full or in major part, to meet the needs of a federal action (*e.g.,* activity, development project, license, permit, or assistance), and without which the federal action, as proposed, could not be conducted. The proponent of a federal action shall consider whether the federal action and its associated facilities affect any coastal use or resource and, if so, whether these interrelated activities satisfy the requirements of the applicable subpart (subparts C, D, E, F or I).

(e) *Coastal Zone.* The term ''coastal zone'' has the same definition as provided in § 304(1) of the Act.

(f) *Director.* The term ''Director'' means the Director of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service, NOAA.

(g) *Effect on any coastal use or resource (coastal effect).* The term ''effect on any coastal use or resource'' means any reasonably foreseeable effect on any coastal use or resource resulting from a federal action. (The term ''federal action'' includes all types of activities subject to the federal consistency requirement under subparts C, D, E, F and I of this part.) Effects are not just environmental effects, but include effects on coastal uses. Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects are effects resulting from the incremental impact of the federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions.

(h) *Enforceable policy.* ''The term ''enforceable policy'' means State policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or administrative decisions, by which a State exerts control over private and public land and water uses and natural resources in the coastal zone,'' 16 USC 1453(6a), and which are incorporated in a management program as approved by OCRM either as part of program approval or as a program change under 15 CFR part 923, subpart H. An enforceable policy shall contain standards of sufficient specificity to guide public and private uses. Enforceable policies need not establish detailed criteria such that a proponent of an activity could determine the consistency of an activity without interaction with the State agency. State agencies may identify management measures which are based on enforceable policies, and, if implemented, would allow the activity to be conducted consistent with the enforceable policies of the program. A State agency, however, must base its objection on enforceable policies.

(i) *Executive Office of the President.* The term ''Executive Office of the President'' means the office, council, board, or other entity within the Executive Office of the President which shall participate with the Secretary in seeking to mediate serious disagreements which may arise between a Federal agency and a coastal State.

(j) *Federal agency.* The term ''Federal agency'' means any department, agency, board, commission, council, independent office or similar entity within the executive branch of the federal government, or any wholly owned federal government corporation.

(k) *Management program.* The term ''management program'' has the same definition as provided in section 304(12) of the Act, except that for the purposes of this part the term is limited to those management programs adopted by a coastal State in accordance with the provisions of section 306 of the Act, and approved by the Assistant Administrator.

(l) *OCRM.* The term ''OCRM'' means the Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration

(''NOAA''), U.S. Department of Commerce.

(m) *Secretary.* The term ''Secretary'' means the Secretary of Commerce and/or designee.

(n) *Section.* The term ''Section'' means a section of the Coastal Zone Management Act of 1972, as amended.

(o) *State agency.* The term ''State agency'' means the agency of the State government designated pursuant to section 306(d)(6) of the Act to receive and administer grants for an approved management program, or a single designee State agency appointed by the 306(d)(6) State agency.

Subpart C—Consistency for Federal Agency Activities

§ 930.30 Objectives.

The provisions of this subpart are intended to assure that all Federal agency activities including development projects affecting any coastal use or resource will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of approved management programs. The provisions of subpart I of this part are intended to supplement the provisions of this subpart for Federal agency activities having interstate coastal effects.

§ 930.31 Federal agency activity.

(a) The term ''Federal agency activity'' means any functions performed by or on behalf of a Federal agency in the exercise of its statutory responsibilities. This encompasses a wide range of Federal agency activities which initiate an event or series of events where coastal effects are reasonably foreseeable, *e.g.,* rulemaking, planning, physical alteration, exclusion of uses. The term ''Federal agency activity'' does not include the issuance of a federal license or permit to an applicant or person (*see* subparts D and E of this part) or the granting of federal assistance to an applicant agency (*see* subpart F of this part).

(b) The term federal ''development project'' means a Federal agency activity involving the planning, construction, modification, or removal of public works, facilities, or other structures, and includes the acquisition, use, or disposal of any coastal use or resource.

(c) The Federal agency activity category is a residual category for federal actions that are not covered under subparts D, E, or F of this part.

(d) A general permit program proposed by a Federal agency is subject to this subpart if the general permit program does not involve case-by-case approval by the Federal agency, unless a Federal agency chooses to subject its general permit program to consistency review under subpart D of this part, by providing the State agency with a consistency certification. When proposing a general permit program, a Federal agency shall provide a consistency determination to the relevant management programs and request that the State agency(ies) provide the Federal agency with conditions that would permit the State agency to concur with the Federal agency's consistency determination. State concurrence shall remove the need for the State agency to review future case-by-case uses of the general permit for consistency with the enforceable policies of management programs. Federal agencies shall, to the maximum extent practicable, incorporate the State conditions into the general permit. If the State conditions are not incorporated into the general permit or a State agency objects to the general permit, then the Federal agency shall notify potential users of the general permit that the general permit is not authorized for that State unless the State agency concurs that the activity is consistent with the enforceable policies of its management program. Accordingly, the applicants in those States shall provide the State agency with a consistency certification under subpart D of this part.

(e) The terms ''Federal agency activity'' and ''Federal development project'' also include modifications of any such activity or development project which affect any coastal use or resource, provided that, in the case of modifications of an activity or development project which the State agency has previously reviewed, the effect on any coastal use or resource is substantially different than those previously reviewed by the State agency.

§ 930.32 Consistent to the maximum extent practicable.

(a)(1) The term ''consistent to the maximum extent practicable'' means fully consistent with the enforceable policies of management programs unless full consistency is prohibited by existing law applicable to the Federal agency.

(2) Section 307(e) of the Act does not relieve Federal agencies of the consistency requirements under the Act. The Act was intended to cause substantive changes in Federal agency decisionmaking within the context of the discretionary powers residing in such agencies. Accordingly, whenever legally permissible, Federal agencies shall consider the enforceable policies of management programs as requirements to be adhered to in addition to existing Federal agency statutory mandates. If a Federal agency asserts that full consistency with the management program is prohibited, it shall clearly describe, in writing, to the State agency the statutory provisions, legislative history, or other legal authority which limits the Federal agency's discretion to be fully consistent with the enforceable policies of the management program.

(3) For the purpose of determining consistent to the maximum extent practicable under paragraphs (a)(1) and (2) of this section, federal legal authority includes Federal appropriation Acts if the appropriation Act includes language that specifically prohibits full consistency with specific enforceable policies of management programs. Federal agencies shall not use a general claim of a lack of funding or insufficient appropriated funds or failure to include the cost of being fully consistent in Federal budget and planning processes as a basis for being consistent to the maximum extent practicable with an enforceable policy of a management program. The only circumstance where a Federal agency may rely on a lack of funding as a limitation on being fully consistent with an enforceable policy is the Presidential exemption described in section 307(c)(1)(B) of the Act (16 USC 1456(c)(1)(B)). In cases where the cost of being consistent with the enforceable policies of a management program was not included in the Federal agency's budget and planning processes, the Federal agency should determine the amount of funds needed and seek additional federal funds. Federal agencies should include the cost of being fully consistent with the enforceable policies of management programs in their budget and planning processes, to the same extent that a Federal agency would plan for the cost of complying with other federal requirements.

(b) A Federal agency may deviate from full consistency with an approved management program when such deviation is justified because of an emergency or other similar unforeseen circumstance (''exigent circumstance''), which presents the Federal agency with a substantial obstacle that prevents complete adherence to the approved program. Any deviation shall be the minimum necessary to address the exigent circumstance. Federal agencies shall carry out their activities consistent to the maximum extent practicable with the enforceable policies of a management program, to the extent that the exigent circumstance allows. Federal agencies shall consult with

State agencies to the extent that an exigent circumstance allows and shall attempt to seek State agency concurrence prior to addressing the exigent circumstance. Once the exigent circumstances have passed, and if the Federal agency is still carrying out an activity with coastal effects, Federal agencies shall comply with all applicable provisions of this subpart to ensure that the activity is consistent to the maximum extent practicable with the enforceable policies of management programs. Once the Federal agency has addressed the exigent circumstance or completed its emergency response activities, it shall provide the State agency with a description of its actions and their coastal effects.

(c) A classified activity that affects any coastal use or resource is not exempt from the requirements of this subpart, unless the activity is exempted by the President under section 307(c)(1)(B) of the Act. Under the consistent to the maximum extent practicable standard, the Federal agency shall provide to the State agency a description of the project and coastal effects that it is legally permitted to release or does not otherwise breach the classified nature of the activity. Even when a Federal agency may not be able to disclose project information, the Federal agency shall conduct the classified activity consistent to the maximum extent practicable with the enforceable policies of management programs. The term classified means to protect from disclosure national security information concerning the national defense or foreign policy, provided that the information has been properly classified in accordance with the substantive and procedural requirements of an executive order. Federal and State agencies are encouraged to agree on a qualified third party(ies) with appropriate security clearance(s) to review classified information and to provide non-classified comments regarding the activity's reasonably foreseeable coastal effects.

§ 930.33 Identifying Federal agency activities affecting any coastal use or resource.

(a) Federal agencies shall determine which of their activities affect any coastal use or resource of States with approved management programs.

(1) Effects are determined by looking at reasonably foreseeable direct and indirect effects on any coastal use or resource. An action which has minimal or no environmental effects may still have effects on a coastal use (*e.g.,* effects on public access and recreational opportunities, protection of historic property) or a coastal resource, if the activity initiates an event or series of events where coastal effects are reasonably foreseeable. Therefore, Federal agencies shall, in making a determination of effects, review relevant management program enforceable policies as part of determining effects on any coastal use or resource.

(2) If the Federal agency determines that a Federal agency activity has no effects on any coastal use or resource, and a negative determination under § 930.35 is not required, then the Federal agency is not required to coordinate with State agencies under section 307 of the Act.

(3) (i) *De minimis* Federal agency activities. Federal agencies are encouraged to review their activities, other than development projects within the coastal zone, to identify *de minimis* activities, and request State agency concurrence that these de minimis activities should not be subject to further State agency review. *De minimis* activities shall only be excluded from State agency review if a Federal agency and State agency have agreed. The State agency shall provide for public participation under section 306(d)(14) of the Act when reviewing the Federal agency's *de minimis* activity request. If the State agency objects to the Federal agency's *de minimis* finding then the Federal agency must provide the State agency with either a negative determination or a consistency determination pursuant to this subpart. OCRM is available to facilitate a Federal agency's request.

(ii) *De minimis* activities are activities that are expected to have insignificant direct or indirect (cumulative and secondary) coastal effects and which the State agency concurs are *de minimis.*

(4) *Environmentally beneficial activities.* The State agency and Federal agencies may agree to exclude environmentally beneficial Federal agency activities (either on a case-by-case basis or for a category of activities) from further State agency consistency review. Environmentally beneficial activity means an activity that protects, preserves, or restores the natural resources of the coastal zone. The State agency shall provide for public participation under section 306(d)(14) of the Act for the State agency's consideration of whether to exclude environmentally beneficial activities.

(5) General consistency determinations, phased consistency determinations, and national or regional consistency determinations under § 930.36 are also available to facilitate federal-State coordination.

(b) Federal agencies shall consider all development projects within the coastal zone to be activities affecting any coastal use or resource. All other types of activities within the coastal zone are subject to Federal agency review to determine whether they affect any coastal use or resource.

(c)(1) Federal agency activities and development projects outside of the coastal zone, are subject to Federal agency review to determine whether they affect any coastal use or resource.

(d) Federal agencies shall broadly construe the effects test to provide State agencies with a consistency determination under § 930.34 and not a negative determination under § 930.35 or other determinations of no effects. Early coordination and cooperation between a Federal agency and the State agency can enable the parties to focus their efforts on particular Federal agency activities of concern to the State agency.

§ 930.34 Federal and State agency coordination.

(a)(1) Federal agencies shall provide State agencies with consistency determinations for all Federal agency activities affecting any coastal use or resource. To facilitate State agency review, Federal agencies should coordinate with the State agency prior to providing the determination.

(2) *Use of existing procedures.* Federal agencies are encouraged to coordinate and consult with State agencies through use of existing procedures in order to avoid waste, duplication of effort, and to reduce Federal and State agency administrative burdens. Where necessary, these existing procedures should be modified to facilitate coordination and consultation under the Act.

(b) *Listed activities.* State agencies are strongly encouraged to list in their management programs Federal agency activities which, in the opinion of the State agency, will have reasonably foreseeable coastal effects and therefore, may require a Federal agency consistency determination. Listed Federal agency activities shall be described in terms of the specific type of activity involved (*e.g.,* federal reclamation projects). In the event the State agency chooses to describe Federal agency activities that occur outside of the coastal zone, which the State agency believes will have reasonably foreseeable coastal effects, it shall also describe the geographic location of such activities (*e.g.,* reclamation projects in coastal floodplains).

(c) *Unlisted activities.* State agencies should monitor unlisted Federal agency

activities (*e.g.,* by use of intergovernmental review process established pursuant to E.O. 12372, review of NEPA documents, and the **Federal Register**) and should notify Federal agencies of unlisted Federal agency activities which Federal agencies have not subjected to a consistency review but which, in the opinion of the State agency, will have reasonably foreseeable coastal effects and therefore, may require a Federal agency consistency determination. The provisions in paragraphs (b) and (c) of this section are recommended rather than mandatory procedures for facilitating federal-State coordination of Federal agency activities which affect any coastal use or resource. State agency notification to the Federal agency (by listed or unlisted notification) is neither a substitute for nor does it eliminate Federal agency responsibility to comply with the consistency requirement, and to provide State agencies with consistency determinations for all development projects in the coastal zone and for all other Federal agency activities which the Federal agency finds affect any coastal use or resource, regardless of whether the State agency has listed the activity or notified the Federal agency through case-by-case monitoring.

(d) *State guidance and assistance to Federal agencies.* As a preliminary matter, a decision that a Federal agency activity affects any coastal use or resource should lead to early consultation with the State agency (*i.e.,* before the required 90-day period). Federal agencies should obtain the views and assistance of the State agency regarding the means for determining that the proposed activity will be conducted in a manner consistent to the maximum extent practicable with the enforceable policies of a management program. As part of its assistance efforts, the State agency shall make available for public inspection copies of the management program document. Upon request by the Federal agency, the State agency shall identify any enforceable policies applicable to the proposed activity based upon the information provided to the State agency at the time of the request.

§ 930.35 Negative determinations for proposed activities.

(a) If a Federal agency determines that there will not be coastal effects, then the Federal agency shall provide the State agencies with a negative determination for a Federal agency activity:

(1) Identified by a State agency on its list, as described in § 930.34(b), or through case-by-case monitoring of unlisted activities; or

(2) Which is the same as or is similar to activities for which consistency determinations have been prepared in the past; or

(3) For which the Federal agency undertook a thorough consistency assessment and developed initial findings on the coastal effects of the activity.

(b) *Content of a negative determination.* A negative determination may be submitted to State agencies in any written form so long as it contains a brief description of the activity, the activity's location and the basis for the Federal agency's determination that the activity will not affect any coastal use or resource. In determining effects, Federal agencies shall follow § 930.33(a)(1), including an evaluation of the relevant enforceable policies of a management program and include the evaluation in the negative determination. The level of detail in the Federal agency's analysis may vary depending on the scope and complexity of the activity and issues raised by the State agency, but shall be sufficient for the State agency to evaluate whether coastal effects are reasonably foreseeable.

(c) A negative determination under paragraph (a) of this section shall be provided to the State agency at least 90 days before final approval of the activity, unless both the Federal agency and the State agency agree to an alternative notification schedule. A State agency is not obligated to respond to a negative determination. If a State agency does not respond to a Federal agency's negative determination within 60 days, State agency concurrence with the negative determination shall be presumed. State agency concurrence shall not be presumed in cases where the State agency, within the 60-day period, requests an extension of time to review the matter. Federal agencies shall approve one request for an extension period of 15 days or less. If a State agency objects to a negative determination, asserting that coastal effects are reasonably foreseeable, the Federal agency shall consider submitting a consistency determination to the State agency or otherwise attempt to resolve any disagreement within the remainder of the 90-day period. If a Federal agency, in response to a State agency's objection to a negative determination, agrees that coastal effects are reasonably foreseeable, the State agency and Federal agency should attempt to agree to complete the consistency review within the 90-day period for the negative determination or consider an alternative schedule pursuant to § 930.36(b)(1). Federal agencies should consider postponing final Federal agency action, beyond the 90-day period, until a disagreement has been resolved. State agencies are not required to provide public notice of the receipt of a negative determination or the resolution of an objection to a negative determination, unless a Federal agency submits a consistency determination pursuant to § 930.34.

(d) In the event of a serious disagreement between a Federal agency and a State agency regarding a determination related to whether a proposed activity affects any coastal use or resource, either party may seek the Secretarial mediation or OCRM mediation services provided for in subpart G.

§ 930.36 Consistency determinations for proposed activities.

(a) Federal agencies shall review their proposed Federal agency activities which affect any coastal use or resource in order to develop consistency determinations which indicate whether such activities will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of approved management programs. Federal agencies should consult with State agencies at an early stage in the development of the proposed activity in order to assess whether such activities will be consistent to the maximum extent practicable with the enforceable policies of such programs.

(b) *Timing of consistency determinations.* (1) Federal agencies shall provide State agencies with a consistency determination at the earliest practicable time in the planning or reassessment of the activity. A consistency determination should be prepared following development of sufficient information to reasonably determine the consistency of the activity with the management program, but before the Federal agency reaches a significant point of decisionmaking in its review process, i.e., while the Federal agency has the ability to modify the activity. The consistency determination shall be provided to State agencies at least 90 days before final approval of the Federal agency activity unless both the Federal agency and the State agency agree to an alternative notification schedule.

(2) Federal and State agencies may mutually agree upon procedures for extending the notification requirement beyond 90 days for activities requiring a substantial review period, and for shortening the notification period for

activities requiring a less extensive review period, provided that public participation requirements are met.

(c) *General consistency determinations.* In cases where Federal agencies will be performing repeated activity other than a development project (*e.g.,* ongoing maintenance, waste disposal) which cumulatively has an effect upon any coastal use or resource, the Federal agency may develop a general consistency determination, thereby avoiding the necessity of issuing separate consistency determinations for each incremental action controlled by the major activity. A Federal agency may provide a State agency with a general consistency determination only in situations where the incremental actions are repetitive and do not affect any coastal use or resource when performed separately. A Federal agency and State agency may mutually agree on a general consistency determination for de minimis activities (*see* § 930.33(a)(3)) or any other repetitive activity or category of activity(ies). If a Federal agency issues a general consistency determination, it shall thereafter periodically consult with the State agency to discuss the manner in which the incremental actions are being undertaken.

(d) *Phased consistency determinations.* In cases where the Federal agency has sufficient information to determine the consistency of a proposed development project or other activity from planning to completion, the Federal agency shall provide the State agency with one consistency determination for the entire activity or development project. In cases where federal decisions related to a proposed development project or other activity will be made in phases based upon developing information that was not available at the time of the original consistency determination, with each subsequent phase subject to Federal agency discretion to implement alternative decisions based upon such information (*e.g.,* planning, siting, and design decisions), a consistency determination will be required for each major decision. In cases of phased decisionmaking, Federal agencies shall ensure that the development project or other activity continues to be consistent to the maximum extent practicable with the management program.

(e) *National or regional consistency determinations.* (1) A Federal agency may provide States with consistency determinations for Federal agency activities that are national or regional in scope (*e.g.*, rulemaking, national plans), and that affect any coastal use or resource of more than one State. Many States share common coastal management issues and have similar enforceable policies, *e.g.*, protection of a particular coastal resource. The Federal agency's national or regional consistency determination should, at a minimum, address the common denominator of these policies, *i.e.*, the common coastal effects and management issues, and thereby address different States' policies with one discussion and determination. If a Federal agency decides not to use this section, it must issue consistency determinations to each State agency pursuant to § 930.39.

(2) Federal agency activities with coastal effects shall be consistent to the maximum extent practicable with the enforceable policies of each State's management program. Thus, the Federal agency's national or regional consistency determination shall contain sections that would apply to individual States to address coastal effects and enforceable policies unique to particular States, if common coastal effects and enforceable policies cannot be addressed under paragraph (e)(1). Early coordination with coastal States will enable the Federal agency to identify particular coastal management concerns and policies. In addition, the Federal agency could address the concerns of each affected State by providing for State conditions for the proposed activity. Further, the consistency determination could identify the coordination efforts and describe how the Federal agency responded to State agency concerns.

§ 930.37 Consistency determinations and National Environmental Policy Act (NEPA) requirements

A Federal agency may use its NEPA documents as a vehicle for its consistency determination or negative determination under this subpart. However, a Federal agency's federal consistency obligations under the Act are independent of those required under NEPA and are not necessarily fulfilled by the submission of a NEPA document. If a Federal agency includes its consistency determination or negative determination in a NEPA document, the Federal agency shall ensure that the NEPA document includes the information and adheres to the timeframes required by this subpart. Federal agencies and State agencies should mutually agree on how to best coordinate the requirements of NEPA and the Act.

§ 930.38 Consistency determinations for activities initiated prior to management program approval.

(a) A consistency determination is required for ongoing Federal agency activities other than development projects initiated prior to management program approval, which are governed by statutory authority under which the Federal agency retains discretion to reassess and modify the activity. In these cases the consistency determination must be made by the Federal agency at the earliest practicable time following management program approval, and the State agency must be provided with a consistency determination no later than 120 days after management program approval for ongoing activities which the State agency lists or identifies through monitoring as subject to consistency with the management program.

(b) A consistency determination is required for major, phased federal development project decisions described in § 930.36(d) which are made following management program approval and are related to development projects initiated prior to program approval. In making these new decisions, Federal agencies shall consider effects on any coastal use or resource not fully evaluated at the outset of the project. This provision shall not apply to phased federal decisions which were specifically described, considered and approved prior to management program approval (*e.g.*, in a final environmental impact statement issued pursuant to NEPA).

§ 930.39 Content of a consistency determination.

(a) The consistency determination shall include a brief statement indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the management program. The statement must be based upon an evaluation of the relevant enforceable policies of the management program. A description of this evaluation shall be included in the consistency determination, or provided to the State agency simultaneously with the consistency determination if the evaluation is contained in another document. Where a Federal agency is aware, prior to its submission of its consistency determination, that its activity is not fully consistent with a management program's enforceable policies, the Federal agency shall describe in its consistency determination the legal authority that prohibits full consistency as required by

§ 930.32(a)(2). Where the Federal agency is not aware of any inconsistency until after submission of its consistency determination, the Federal agency shall submit its description of the legal authority that prohibits full consistency to the State agency as soon as possible, or before the end of the 90-day period described in § 930.36(b)(1). The consistency determination shall also include a detailed description of the activity, its associated facilities, and their coastal effects, and comprehensive data and information sufficient to support the Federal agency's consistency statement. The amount of detail in the evaluation of the enforceable policies, activity description and supporting information shall be commensurate with the expected coastal effects of the activity. The Federal agency may submit the necessary information in any manner it chooses so long as the requirements of this subpart are satisfied.

(b) Federal agencies shall be guided by the following in making their consistency determinations. The activity its effects on any coastal use or resource, associated facilities (*e.g.*, proposed siting and construction of access road, connecting pipeline, support buildings, and the effects of the associated facilities (*e.g.*, erosion, wetlands, beach access impacts), must all be consistent to the maximum extent practicable with the enforceable policies of the management program.

(c) In making their consistency determinations, Federal agencies shall ensure that their activities are consistent to the maximum extent practicable with the enforceable, policies of the management program. However, Federal agencies should give consideration to management program provisions which are in the nature of recommendations.

(d) When Federal agency standards are more restrictive than standards or requirements contained in the management program, the Federal agency may continue to apply its stricter standards. In such cases the Federal agency shall inform the State agency in the consistency determination of the statutory, regulatory or other basis for the application of the stricter standards.

(e) *State permit requirements.* Federal law, other than the CZMA, may require a Federal agency to obtain a State permit. Even when Federal agencies are not required to obtain State permits, Federal agencies shall still be consistent to the maximum extent practicable with the enforceable policies that are contained in such State permit programs that are part of a management program.

§ 930.40 Multiple Federal agency participation.

Whenever more than one Federal agency is involved in a Federal agency activity or its associated facilities affecting any coastal use or resource, or is involved in a group of Federal agency activities related to each other because of their geographic proximity, the Federal agencies may prepare one consistency determination for all the federal activities involved. In such cases, Federal agencies should consider joint preparation or lead agency development of the consistency determination. In either case, the consistency determination shall be transmitted to the State agency at least 90 days before final decisions are taken by any of the participating agencies and shall comply with the requirements of § 930.39.

§ 930.41 State agency response.

(a) A State agency shall inform the Federal agency of its concurrence with or objection to the Federal agency's consistency determination at the earliest practicable time, after providing for public participation in the State agency's review of the consistency determination. The Federal agency may presume State agency concurrence if the State agency's response is not received within 60 days from receipt of the Federal agency's consistency determination and supporting information. The 60-day review period begins when the State agency receives the consistency determination and supporting information required by § 930.39(a). If the information required by § 930.39(a) is not included with the determination, the State agency shall immediately notify the Federal agency that the 60-day review period has not begun, what information required by § 930.39(a) is missing, and that the 60-day review period will begin when the missing information is received by the State agency. If a Federal agency has submitted a consistency determination and information required by § 930.39(a), then the State agency shall not assert that the 60-day review period has not begun for failure to submit information that is in addition to that required by § 930.39(a).

(b) State agency concurrence shall not be presumed in cases where the State agency, within the 60-day period, requests an extension of time to review the matter. Federal agencies shall approve one request for an extension period of 15 days or less. In considering whether a longer or additional extension period is appropriate, the Federal agency should consider the magnitude and complexity of the information contained in the consistency determination.

(c) Final Federal agency action shall not be taken sooner than 90 days from the receipt by the State agency of the consistency determination unless the State concurs or concurrence is presumed, pursuant to paragraphs (a) and (b), with the activity, or unless both the Federal agency and the State agency agree to an alternative period.

(d) *Time limits on concurrences.* A State agency cannot unilaterally place an expiration date on its concurrence. If a State agency believes that an expiration date is necessary, State and Federal agencies may agree to a time limit. If there is no agreement, later phases of, or modifications to, the activity that will have effects not evaluated at the time of the original consistency determination will require either a new consistency determination, a supplemental consistency determination under § 930.46, or a phased review under § 930.36(d) of this subpart.

(e) *State processing fees.* The Act does not require Federal agencies to pay State processing fees. State agencies shall not assess a Federal agency with a fee to process the Federal agency's consistency determination unless payment of such fees is required by other federal law or otherwise agreed to by the Federal agency and allowed by the Comptroller General of the United States. In no case may a State agency stay the consistency review period or base its objection on the failure of a Federal agency to pay a fee.

§ 930.42 Public participation.

(a) Management programs shall provide for public participation in the State agency's review of consistency determinations. Public participation, at a minimum, shall consist of public notice for the area(s) of the coastal zone likely to be affected by the activity, as determined by the State agency.

(b) *Timing of public notice.* States shall provide timely public notice after the consistency determination has been received by the State agency, except in cases where earlier public notice on the consistency determination by the Federal agency or the State agency meets the requirements of this section. A public comment period shall be provided by the State sufficient to give the public an opportunity to develop and provide comments on whether the project is consistent with management program enforceable policies and still allow the State agency to issue its concurrence or objection within the 60 day State response period.

(c) *Content of public notice.* The public notice shall:

(1) Specify that the proposed activity is subject to review for consistency with the enforceable policies of the management program;

(2) Provide sufficient information to serve as a basis for comment;

(3) Specify a source for additional information, *e.g.*, a State agency web site; and

(4) Specify a contact for submitting comments to the State agency.

(d) Procedural options that may be used by the State agency for issuance of public notice include, but are not limited to, public notice through an official State gazette, a local newspaper serving areas of coastal zone likely to be affected by the activity, individual State mailings, public notice through a management program newsletter, and electronic notices, *e.g.*, web sites. However, electronic notices, *e.g.*, web sites, shall not be the sole source of a public notification, but may be used in conjunction with other means. Web sites may be used to provide a location for the public to obtain additional information. States shall not require that the Federal agency provide public notice. Federal and State agencies are encouraged to issue joint public notices, and hold joint public hearings, to minimize duplication of effort and to avoid unnecessary delays, so long as the joint notice meets the other requirements of this section.

§ 930.43 State agency objection.

(a) In the event the State agency objects to the Federal agency's consistency determination, the State agency shall accompany its response to the Federal agency with its reasons for the objection and supporting information. The State agency response shall describe:

(1) How the proposed activity will be inconsistent with specific enforceable policies of the management program; and

(2) The specific enforceable policies (including citations).

(3) The State agency should also describe alternative measures (if they exist) which, if adopted by the Federal agency, would allow the activity to proceed in a manner consistent to the maximum extent practicable with the enforceable policies of the management program. Failure to describe alternatives does not affect the validity of the State agency's objection.

(b) If the State agency's objection is based upon a finding that the Federal agency has failed to supply sufficient information, the State agency's response must describe the nature of the information requested and the necessity of having such information to determine the consistency of the Federal agency activity with the enforceable policies of the management program.

(c) State agencies shall send to the Director a copy of objections to Federal agency consistency determinations.

(d) In the event of an objection, Federal and State agencies should use the remaining portion of the 90-day notice period (*see* § 930.36(b)) to attempt to resolve their differences. If resolution has not been reached at the end of the 90-day period, Federal agencies should consider using the dispute resolution mechanisms of this part and postponing final federal action until the problems have been resolved. At the end of the 90-day period the Federal agency shall not proceed with the activity over a State agency's objection unless:

(1) the Federal agency has concluded that under the ''consistent to the maximum extent practicable'' standard described in section 930.32 consistency with the enforceable policies of the management program is prohibited by existing law applicable to the Federal agency and the Federal agency has clearly described, in writing, to the State agency the legal impediments to full consistency (See §§ 930.32(a) and 930.39(a)), or

(2) the Federal agency has concluded that its proposed action is fully consistent with the enforceable policies of the management program, though the State agency objects.

(e) If a Federal agency decides to proceed with a Federal agency activity that is objected to by a State agency, or to follow an alternative suggested by the State agency, the Federal agency shall notify the State agency of its decision to proceed before the project commences.

§ 930.44 Availability of mediation for disputes concerning proposed activities.

In the event of a serious disagreement between a Federal agency and a State agency regarding the consistency of a proposed federal activity affecting any coastal use or resource, either party may request the Secretarial mediation or OCRM mediation services provided for in subpart G.

§ 930.45 Availability of mediation for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor federally approved activities in order to make certain that such activities continue to be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the management program.

(b) The State agency may request that the Federal agency take appropriate remedial action following a serious disagreement resulting from a Federal agency activity, including those activities where the State agency's concurrence was presumed, which was:

(1) Previously determined to be consistent to the maximum extent practicable with the management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent to the maximum extent practicable with the enforceable policies of the management program; or

(2) Previously determined not to be a Federal agency activity affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, the activity affects any coastal use or resource and is not consistent to the maximum extent practicable with the enforceable policies of the management program. The State agency's request shall include supporting information and a proposal for recommended remedial action.

(c) If, after a reasonable time following a request for remedial action, the State agency still maintains that a serious disagreement exists, either party may request the Secretarial mediation or OCRM mediation services provided for in subpart G of this part.

§ 930.46 Supplemental coordination for proposed activities.

(a) For proposed Federal agency activities that were previously determined by the State agency to be consistent with the management program, but which have not yet begun, Federal agencies shall further coordinate with the State agency and prepare a supplemental consistency determination if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The Federal agency makes substantial changes in the proposed activity that are relevant to management program enforceable policies; or

(2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

(b) The State agency may notify the Federal agency and the Director of proposed activities which the State

agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the Federal agency to implement the proposed activity consistent with the enforceable policies of the management program. State agency notification under this paragraph (b) does not remove the requirement under paragraph (a) of this section for Federal agencies to notify State agencies.

Subpart D—Consistency for Activities Requiring a Federal License or Permit

§ 930.50 Objectives.

The provisions of this subpart are intended to ensure that any required federal license or permit activity affecting any coastal use or resource is conducted in a manner consistent with approved management programs. The provisions of subpart I of this part are intended to supplement the provisions of this subpart for federal license or permit activities having interstate coastal effects.

§ 930.51 Federal license or permit.

(a) The term ''federal license or permit'' means any required authorization, certification, approval, lease, or other form of permission which any Federal agency is empowered to issue to an applicant. The term does not include OCS plans, and federal license or permit activities described in detail in OCS plans, which are subject to subpart E of this part. The term ''lease,'' means a lease issued by a Federal agency to a non-federal entity that authorizes or approves the use of federal property for a non-federal activity. The term lease does not include leases issued pursuant to lease sales conducted by a Federal agency (*e.g.,* outer continental shelf (OCS) oil and gas lease sales conducted by the Minerals Management Service or oil and gas lease sales conducted by the Bureau of Land Management). Lease sales conducted by a Federal agency are Federal agency activities under subpart C of this part if coastal effects are reasonably foreseeable.

(b) The term also includes the following types of renewals and major amendments which affect any coastal use or resource:

(1) Renewals and major amendments of federal license or permit activities not previously reviewed by the State agency;

(2) Renewals and major amendments of federal license or permit activities previously reviewed by the State agency which are filed after and are subject to management program changes not in existence at the time of original State agency review; and

(3) Renewals and major amendments of federal license or permit activities previously reviewed by the State agency which will cause an effect on any coastal use or resource substantially different than those originally reviewed by the State agency.

(c) The term ''major amendment'' of a federal license or permit activity means any subsequent federal approval that the applicant is required to obtain for modification to the previously reviewed and approved activity and where the activity permitted by issuance of the subsequent approval will affect any coastal use or resource, or, in the case of a major amendment subject to § 930.51(b)(3), affect any coastal use or resource in a way that is substantially different than the description or understanding of effects at the time of the original activity.

(d) The term ''renewals'' of a federal license or permit activity means any subsequent re-issuance, re-approval or extension of an existing license or permit that the applicant is required to obtain for an activity described under paragraph (b) of this section.

(e) The determination of substantially different coastal effects under paragraphs (b)(3), and (c) of this section is made on a case-by-case basis by the State agency, Federal agency and applicant. The opinion of the State agency shall be accorded deference and the terms ''major amendment,'' ''renewals'' and ''substantially different'' shall be construed broadly to ensure that the State agency has the opportunity to review activities and coastal effects not previously reviewed.

(f) *This subpart applies to active applications.* If an applicant withdraws its application to the Federal agency, then the consistency process is terminated. If the applicant reapplies to the Federal agency, then a new consistency review process will start. If a Federal agency stops or stays the Federal license or permit application process, then the consistency review period will be stopped or stayed for the same amount of time as for the Federal application process.

§ 930.52 Applicant.

The term ''applicant'' means any individual, public or private corporation, partnership, association, or other entity organized or existing under the laws of any nation, State, or any State, regional, or local government, who, following management program approval, either files an application for a required individual federal license or permit, or who files a consistency certification for a required general federal license or permit under § 930.31(d) to conduct an activity affecting any coastal use or resource. The term ''applicant'' does not include Federal agencies applying for federal licenses or permits. Federal agency activities requiring federal licenses or permits are subject to subpart C of this part.

§ 930.53 Listed federal license or permit activities.

(a) State agencies shall develop a list of federal license or permit activities which affect any coastal use or resource, including reasonably foreseeable effects, and which the State agency wishes to review for consistency with the management program. The list shall be included as part of the management program, and the federal license or permit activities shall be described in terms of the specific licenses or permits involved (*e.g.,* Corps of Engineers 404 permits, Coast Guard bridge permits). In the event the State agency chooses to review federal license or permit activities, with reasonably foreseeable coastal effects, outside of the coastal zone, it must generally describe the geographic location of such activities.

(1) The geographic location description should encompass areas outside of the coastal zone where coastal effects from federal license or permit activities are reasonably foreseeable. The State agency should exclude geographic areas outside of the coastal zone where coastal effects are not reasonably foreseeable. Listed activities may have different geographic location descriptions, depending on the nature of the activity and its coastal effects. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries defined under the State's coastal nonpoint pollution control program, or other ecologically identifiable areas. Federal lands located within the boundaries of a State's coastal zone are automatically included within the geographic location description; State agencies do not have to describe these areas. State agencies do have to describe the geographic location of listed activities occurring on federal lands located beyond the boundaries of a State's coastal zone.

(2) For listed activities occurring outside of the coastal zone for which a State has not generally described the

geographic location of review, States must follow the conditions for review of unlisted activities under § 930.54 of this subpart.

(b) *General concurrences for minor activities.* To avoid repeated review of minor federal license or permit activities which, while individually inconsequential, cumulatively affect any coastal use or resource, the State agency, after developing conditions allowing concurrence for such activities, may issue a general public notice (*see* § 930.61) and general concurrence allowing similar minor work in the same geographic area to proceed without prior State agency review. In such cases, the State agency must set forth in the management program license and permit list the minor federal license or permit activities and the relevant conditions which are covered by the general concurrence. Minor federal license or permit activities which satisfy the conditions of the general concurrence are not subject to the consistency certification requirement of this subpart. Except in cases where the State agency indicates otherwise, copies of federal license or permit applications for activities subject to a general concurrence must be sent by the applicant to the State agency to allow the State agency to monitor adherence to the conditions required by such concurrence. Confidential and proprietary material within such applications may be deleted.

(c) The license and permit list may be amended by the State agency following consultation with the affected Federal agency and approval by the Director pursuant to the program change requirements found at 15 CFR part 923, subpart H.

(1) Consultation with the affected Federal agency means, at least 60 days prior to submitting a program change request to OCRM, a State agency shall notify in writing the relevant regional or field Federal agency staff and the head of the affected Federal agency, and request comments on the listing change. The notification shall describe the proposed change and identify the regional Federal agency staff the State has contacted for consultation.

(2) A State agency must include in its program change request to OCRM a description of any comments received from the affected Federal agency.

(d) No federal license or permit described on an approved list shall be issued by a Federal agency until the requirements of this subpart have been satisfied. Federal agencies shall inform applicants for listed licenses or permits of the requirements of this subpart.

§ 930.54 Unlisted federal license or permit activities.

(a)(1) With the assistance of Federal agencies, State agencies should monitor unlisted federal license or permit activities (*e.g.,* by use of intergovernmental review process established pursuant to E.O. 12372, review of NEPA documents, **Federal Register** notices). State agencies shall notify Federal agencies, applicants, and the Director of unlisted activities affecting any coastal use or resource which require State agency review within 30 days from notice of the license or permit application, that has been submitted to the approving Federal agency, otherwise the State agency waives its right to review the unlisted activity. The waiver does not apply in cases where the State agency does not receive notice of the federal license or permit application.

(2) Federal agencies or applicants should provide written notice of the submission of applications for federal licenses or permits for unlisted activities to the State agency. Notice to the State agency may be constructive if notice is published in an official federal public notification document or through an official State clearinghouse (*i.e.,* the **Federal Register**, draft or final NEPA EISs that are submitted to the State agency, or a State's intergovernmental review process). The notice, whether actual or constructive, shall contain sufficient information for the State agency to learn of the activity, determine the activity's geographic location, and determine whether coastal effects are reasonably foreseeable.

(b) The State agency's notification shall also request the Director's approval to review the unlisted activity and shall contain an analysis that supports the State agency's assertion that coastal effects are reasonably foreseeable. Following State agency notification to the Federal agency, applicant and the Director, the Federal agency shall not issue the license or permit until the requirements of this subpart have been satisfied, unless the Director disapproves the State agency's request to review the activity.

(c) The Federal agency and the applicant have 15 days from receipt of the State agency notice to provide comments to the Director regarding the State agency's request to review the activity. The sole basis for the Director's approval or disapproval of the State agency's request will relate to whether the proposed activity's coastal effects are reasonably foreseeable. The Director shall issue a decision, with supporting comments, to the State agency, Federal agency and applicant within 30 days from receipt of the State agency notice. The Director may extend the decision deadline beyond 30 days due to the complexity of the issues or to address the needs of the State agency, the Federal agency, or the applicant. The Director shall consult with the State agency, the Federal agency and the applicant prior to extending the decision deadline, and shall limit the extension to the minimum time necessary to make its decision. The Director shall notify the relevant parties of the expected length of an extension.

(d) If the Director disapproves the State agency's request, the Federal agency may approve the license or permit application and the applicant need not comply with the requirements of this subpart. If the Director approves the State agency's request, the Federal agency and applicant must comply with the consistency certification procedures of this subpart.

(e) Following an approval by the Director, the applicant shall amend the federal application by including a consistency certification and shall provide the State agency with a copy of the certification along with necessary data and information (*see* §§ 930.58, 930.62 and 930.63). For the purposes of this section, concurrence by the State agency shall be conclusively presumed in the absence of a State agency objection within six months from the original Federal agency notice to the State agency (*see* paragraph (a) of this section) or within three months from receipt of the applicant's consistency certification and necessary data and information, whichever period terminates last.

(f) The unlisted activity procedures in this section are provided to ensure that State agencies are afforded an opportunity to review federal license or permit activities with reasonably foreseeable coastal effects. Prior to bringing the issue before the Director, the concerned parties should discuss coastal effects and consistency. The applicant can avoid delay by simply seeking the State agency's expeditious concurrence rather than waiting for the Director's decision. If an applicant, of its own accord or after negotiations with the State agency, provides a consistency certification and necessary data and information to the State agency, the review shall be deemed to have received the Director's approval, and all of the provisions of this subpart shall apply and the State agency need not request the Director's approval. If an applicant for an unlisted activity has not subjected itself to the consistency process within the 30 day notification period contained in paragraph (a) of this section, the State

agency must adhere to the unlisted activity review requirements of this section to preserve its right to review the activity.

§ 930.55 Availability of mediation for license or permit disputes.

In the event of a serious disagreement between a Federal and State agency regarding whether a listed or unlisted federal license or permit activity is subject to the federal consistency requirement, either party may request the OCRM mediation or Secretarial mediation services provided for in subpart G of this part; notice shall be provided to the applicant. The existence of a serious disagreement will not relieve the Federal agency from the responsibility for withholding approval of a license or permit application for an activity on an approved management program list (*see* § 930.53) or individually approved by the Director (*see* § 930.54) pending satisfaction of the requirements of this subpart. Similarly, the existence of a serious disagreement will not prevent the Federal agency from approving a license or permit activity which has not received Director approval.

§ 930.56 State agency guidance and assistance to applicants.

As a preliminary matter, any applicant for a federal license or permit selected for review by a State agency should obtain the views and assistance of the State agency regarding the means for ensuring that the proposed activity will be conducted in a manner consistent with the management program. As part of its assistance efforts, the State agency shall make available for public inspection copies of the management program document. Upon request by the applicant, the State agency shall identify any enforceable policies applicable to the proposed activity, based upon the information submitted to the State agency.

§ 930.57 Consistency certifications.

(a) Following appropriate coordination and cooperation with the State agency, all applicants for required federal licenses or permits subject to State agency review shall provide in the application to the federal licensing or permitting agency a certification that the proposed activity complies with and will be conducted in a manner consistent with the management program. At the same time, the applicant shall furnish to the State agency a copy of the certification and necessary data and information.

(b) The applicant's consistency certification shall be in the following form: ''The proposed activity complies with the enforceable policies of (name of State) approved management program and will be conducted in a manner consistent with such program.''

§ 930.58 Necessary data and information.

(a) The applicant shall furnish the State agency with necessary data and information along with the consistency certification. Such information and data shall include the following:

(1) A detailed description of the proposed activity, its associated facilities, the coastal effects, and comprehensive data and information sufficient to support the applicant's consistency certification. Maps, diagrams, technical data and other relevant material shall be submitted when a written description alone will not adequately describe the proposal (a copy of the federal application and all supporting material provided to the Federal agency should also be submitted to the State agency);

(2) Information specifically identified in the management program as required necessary data and information for an applicant's consistency certification. The management program as originally approved or amended (pursuant to 15 CFR part 923, subpart H) may describe data and information necessary to assess the consistency of federal license or permit activities. Necessary data and information may include State or local government permits or permit applications which are required for the proposed activity. Required data and information may not include confidential and proprietary material; and

(3) An evaluation that includes a set of findings relating the coastal effects of the proposal and its associated facilities to the relevant enforceable policies of the management program. Applicants shall demonstrate that the activity will be consistent with the enforceable policies of the management program. Applicants shall demonstrate adequate consideration of policies which are in the nature of recommendations. Applicants need not make findings with respect to coastal effects for which the management program does not contain enforceable or recommended policies.

(b) At the request of the applicant, interested parties who have access to information and data required by this section may provide the State agency with all or part of the material required. Furthermore, upon request by the applicant, the State agency shall provide assistance for developing the assessment and findings required by this section.

(c) When satisfied that adequate protection against public disclosure exists, applicants should provide the State agency with confidential and proprietary information which the State agency maintains is necessary to make a reasoned decision on the consistency of the proposal. State agency requests for such information must be related to the necessity of having such information to assess adequately the coastal effects of the proposal.

§ 930.59 Multiple permit review.

(a) Applicants shall, to the extent practicable, consolidate related federal license or permit activities affecting any coastal use or resource for State agency review. State agencies shall, to the extent practicable, provide applicants with a ''one-stop'' multiple permit review for consolidated permits to minimize duplication of effort and to avoid unnecessary delays.

(b) A State agency objection to one or more of the license or permit activities submitted for consolidated review shall not prevent the applicant from receiving Federal agency approval for those license or permit activities found to be consistent with the management program.

§ 930.60 Commencement of State agency review.

(a) Except as provided in § 930.54(e) and paragraph (a)(1) of this section, State agency review of an applicant's consistency certification begins at the time the State agency receives a copy of the consistency certification, and the information and data required pursuant to § 930.58.

(1) If an applicant fails to submit a consistency certification in accordance with § 930.57, or fails to submit necessary data and information required pursuant to § 930.58, the State agency shall, within 30 days of receipt of the incomplete information, notify the applicant and the Federal agency of the missing certification or information, and that:

(i) The State agency's review has not yet begun, and that its review will commence once the necessary certification or information deficiencies have been corrected; or

(ii) The State agency's review has begun, and that the certification or information deficiencies must be cured by the applicant during the State's review period.

(2) Under paragraph (a)(1) of this section, State agencies shall notify the applicant and the Federal agency, within 30 days of receipt of the completed certification and information, of the date when necessary certification or information deficiencies have been corrected, and that the State agency's

consistency review commenced on the date that the complete certification and necessary data and information were received by the State agency.

(3) State agencies and applicants (and persons under subpart E of this part) may mutually agree to stay the consistency timeclock or extend the six-month review period. Such an agreement shall be in writing and shall be provided to the Federal agency. A Federal agency shall not presume State agency concurrence with an activity where such an agreement exists or where a State agency's review period, under paragraph (a)(1)(i) of this section, has not begun.

(b) A State agency request for information or data in addition to that required by § 930.58 shall not extend the date of commencement of State agency review.

§ 930.61 Public participation.

(a) Following receipt of the material described in § 930.60 the State agency shall ensure timely public notice of the proposed activity. Public notice shall be provided for the area(s) of the coastal zone likely to be affected by the proposed activity, as determined by the State agency. At the discretion of the State agency, public participation may include one or more public hearings. The State agency shall not require an applicant or a Federal agency to hold a public hearing. State agencies should restrict the period of public notice, receipt of comments, hearing proceedings and final decision-making to the minimum time necessary to reasonably inform the public, obtain sufficient comment, and develop a decision on the matter.

(b) *Content of public notice.* The public notice shall:

(1) Specify that the proposed activity is subject to review for consistency under the policies of the management program;

(2) Provide sufficient information to serve as a basis for comment;

(3) Specify a source for additional information; and

(4) Specify a contact for submitting comments to the management program.

(c) Procedural options that may be used by the State agency for issuance of public notice include, but are not limited to, public notice through an official State gazette, a local newspaper serving areas of the coastal zone likely to be affected by the activity, individual State mailings, public notice through a management program newsletter, and electronic notices, *e.g.,* web sites. However, electronic notices, *e.g.,* web sites, shall not be the sole source of a public notification, but may be used in conjunction with other means. Web sites may be used to provide a location for the public to obtain additional information. The State agency may require the applicant to provide the public notice. State agencies shall not require that the Federal agency provide public notice. The State agency may rely upon the public notice provided by the Federal agency reviewing the application for the federal license or permit (*e.g.,* notice of availability of NEPA documents) if such notice satisfies the minimum requirements set forth in paragraphs (a) and (b) of this section.

(d) Federal and State agencies are encouraged to issue joint public notices, and hold joint public hearings, whenever possible to minimize duplication of effort and to avoid unnecessary delays.

§ 930.62 State agency concurrence with a consistency certification.

(a) At the earliest practicable time, the State agency shall notify the Federal agency and the applicant whether the State agency concurs with or objects to a consistency certification. The State agency may issue a general concurrence for minor activities (*see* § 930.53(b)). Concurrence by the State agency shall be conclusively presumed if the State agency's response is not received within six months following commencement of State agency review.

(b) If the State agency has not issued a decision within three months following commencement of State agency review, it shall notify the applicant and the Federal agency of the status of the matter and the basis for further delay.

(c) If the State agency issues a concurrence or is conclusively presumed to concur with the applicant's consistency certification, the Federal agency may approve the federal license or permit application. Notwithstanding State agency concurrence with a consistency certification, the federal permitting agency may deny approval of the federal license or permit application. Federal agencies should not delay processing applications pending receipt of a State agency's concurrence. In the event a Federal agency determines that an application will not be approved, it shall immediately notify the applicant and the State agency.

(d) During the period when the State agency is reviewing the consistency certification, the applicant and the State agency should attempt, if necessary, to agree upon conditions, which, if met by the applicant, would permit State agency concurrence. The parties shall also consult with the Federal agency responsible for approving the federal license or permit to ensure that proposed conditions satisfy federal as well as management program requirements (*see also* § 930.4).

§ 930.63 State agency objection to a consistency certification.

(a) If the State agency objects to the applicant's consistency certification within six months following commencement of review, it shall notify the applicant, Federal agency and Director of the objection. A State agency may assert alternative bases for its objection, as described in paragraphs (b) and (c) of this section.

(b) State agency objections that are based on sufficient information to evaluate the applicant's consistency certification shall describe how the proposed activity is inconsistent with specific enforceable policies of the management program. The objection may describe alternative measures (if they exist) which, if adopted by the applicant, may permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the management program.

(c) A State agency objection may be based upon a determination that the applicant has failed, following a written State agency request, to supply the information required pursuant to § 930.58 or other information necessary for the State agency to determine consistency. If the State agency objects on the grounds of insufficient information, the objection shall describe the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the management program. The objection may describe alternative measures (if they exist) which, if adopted by the applicant, may permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the management program.

(d) *Alternatives.* If a State agency proposes an alternative(s) in its objection letter, the alternative(s) shall be described with sufficient specificity to allow the applicant to determine whether to, in consultation with the State agency: adopt an alternative; abandon the project; or file an appeal under subpart H. Application of the specificity requirement demands a case specific approach. More complicated activities or alternatives generally need more information than less-complicated activities or alternatives. *See* § 930.121(d) for further details regarding alternatives for appeals under subpart H of this part.

(e) A State agency objection shall include a statement to the following effect:

Pursuant to 15 CFR part 930, subpart H, and within 30 days from receipt of this letter, you may request that the Secretary of Commerce override this objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the [Name of State] management program and the federal permitting or licensing agency. The Secretary may collect fees from you for administering and processing your request.

§ 930.64 Federal permitting agency responsibility.

Following receipt of a State agency objection to a consistency certification, the Federal agency shall not issue the federal license or permit except as provided in subpart H of this part.

§ 930.65 Remedial action for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor federal license or permit activities in order to make certain that such activities continue to conform to both federal and State requirements.

(b) The State agency shall notify the relevant Federal agency representative for the area involved of any federal license or permit activity which the State agency claims was:

(1) Previously determined to be consistent with the management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent with the management program; or

(2) Previously determined not to be an activity affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having coastal effects substantially different than originally described and, as a result, the activity affects any coastal use or resource in a manner inconsistent with the management program.

(c) The State agency notification shall include:

(1) A description of the activity involved and the alleged lack of compliance with the management program;

(2) supporting information; and

(3) a request for appropriate remedial action. A copy of the request shall be sent to the applicant and the Director. Remedial actions shall be linked to coastal effects substantially different than originally described.

(d) If, after 30 days following a request for remedial action, the State agency still maintains that the applicant is failing to comply substantially with the management program, the governor or State agency may file a written objection with the Director. If the Director finds that the applicant is conducting an activity that is substantially different from the approved activity, the applicant shall submit an amended or new consistency certification and supporting information to the Federal agency and to the State agency, or comply with the originally approved certification.

(e) An applicant shall be found to be conducting an activity substantially different from the approved activity if the State agency claims and the Director finds that the activity affects any coastal use or resource substantially different than originally described by the applicant and, as a result, the activity is no longer being conducted in a manner consistent with the enforceable policies of the management program. The Director may make a finding that an applicant is conducting an activity substantially different from the approved activity only after providing 15 days for the applicant and the Federal agency to review the State agency's objection and to submit comments for the Director's consideration.

§ 930.66 Supplemental coordination for proposed activities

(a) For federal license or permit proposed activities that were previously determined by the State agency to be consistent with the management program, but which have not yet begun, applicants shall further coordinate with the State agency and prepare a supplemental consistency certification if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The applicant makes substantial changes in the proposed activity that are relevant to management program enforceable policies; or

(2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

(b) The State agency may notify the applicant, the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the applicant to implement the proposed activity consistent with the management program. State agency notification under subsection (b) does not remove the requirement under subsection (a) for applicants to notify State agencies.

Subpart E—Consistency for Outer Continental Shelf (OCS) Exploration, Development and Production Activities

§ 930.70 Objectives.

The provisions of this subpart are intended to ensure that all federal license or permit activities described in detail in OCS plans and which affect any coastal use or resource are conducted in a manner consistent with approved management programs.

§ 930.71 Federal license or permit activity described in detail.

The term ''federal license or permit activity described in detail'' means any activity requiring a federal license or permit, as defined in § 930.51, which the Secretary of the Interior determines must be described in detail within an OCS plan.

§ 930.72 Person.

The term ''person'' means any individual, corporation, partnership, association, or other entity organized or existing under the laws of any State; the federal government; any State, regional, or local government; or any entity of such federal, State, regional or local government, who submits to the Secretary of the Interior, or designee following management program approval, an OCS plan which describes in detail federal license or permit activities.

§ 930.73 OCS plan.

(a) The term ''OCS plan'' means any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*), and the regulations under that Act, which is submitted to the Secretary of the Interior or designee following management program approval and which describes in detail federal license or permit activities.

(b) The requirements of this subpart do not apply to federal license or permit applications filed after management program approval for activities described in detail in OCS plans approved by the Secretary of the Interior

or designee prior to management program approval.

§ 930.74 OCS activities subject to State agency review.

Except for States which do not anticipate coastal effects resulting from OCS activities, management program lists required pursuant to § 930.53 shall include a reference to OCS plans which describe in detail federal license or permit activities affecting any coastal use or resource.

§ 930.75 State agency assistance to persons.

As a preliminary matter, any person intending to submit to the Secretary of the Interior an OCS plan which describes in detail federal license or permit activities affecting any coastal use or resource should obtain the views and assistance of the State agency regarding the means for ensuring that such activities will be conducted in a manner consistent with the management program. As part of its assistance efforts, the State agency shall make available for inspection copies of the management program document. Upon request by such persons, the State agency shall identify any enforceable policies applicable to the proposed activities, based upon the information submitted to the State agency.

§ 930.76 Submission of an OCS plan, necessary data and information and consistency certification.

Any person submitting any OCS plan to the Secretary of the Interior or designee shall:

(a) Identify all activities described in detail in the plan which require a federal license or permit and which will have reasonably foreseeable coastal effects;

(b) Submit necessary data and information pursuant to § 930.58;

(c) When satisfied that the proposed activities meet the federal consistency requirements of this subpart, provide the Secretary of the Interior or designee with a consistency certification and necessary data and information. The Secretary of the Interior or designee shall furnish the State agency with a copy of the OCS plan (excluding proprietary information), necessary data and information and consistency certification.

(d) The person's consistency certification shall be in the following form:

The proposed activities described in detail in this plan comply with (name of State(s)) approved management program(s) and will be conducted in a manner consistent with such program(s).

§ 930.77 Commencement of State agency review and public notice.

(a)(1) Except as provided in § 930.60(a), State agency review of the person's consistency certification begins at the time the State agency receives a copy of the OCS plan, consistency certification, and required necessary data and information. A State agency request for information and data in addition to that required by § 930.76 shall not extend the date of commencement of State agency review.

(2) To assess consistency, the State agency shall use the information submitted pursuant to the Department of the Interior's OCS operating regulations (*see* 30 CFR 250.203 and 250.204) and OCS information program (*see* 30 CFR part 252) regulations and necessary data and information (*see* 15 CFR 930.58).

(b) Following receipt of the material described in paragraph (a) of this section, the State agency shall ensure timely public notice of the proposed activities in accordance with § 930.61.

§ 930.78 State agency concurrence or objection.

(a) At the earliest practicable time, the State agency shall notify in writing the person, the Secretary of the Interior or designee and the Director of its concurrence with or objection to the consistency certification. State agencies should restrict the period of public notice, receipt of comments, hearing proceedings and final decision-making to the minimum time necessary to reasonably inform the public, obtain sufficient comment, and develop a decision on the matter. If the State agency has not issued a decision within three months following commencement of State agency review, it shall notify the person, the Secretary of the Interior or designee and the Director of the status of review and the basis for further delay in issuing a final decision. Notice shall be in written form and postmarked no later than three months following the commencement of the State agency's review. Concurrence by the State agency shall be conclusively presumed if the notification required by this subparagraph is not provided.

(b) Concurrence by the State agency shall be conclusively presumed if the State agency's response to the consistency certification is not received within six months following commencement of State agency review.

(c) If the State agency objects to one or more of the federal license or permit activities described in detail in the OCS plan, it must provide a separate discussion for each objection in accordance with § 930.63.

§ 930.79 Effect of State agency concurrence.

(a) If the State agency issues a concurrence or is conclusively presumed to concur with the person's consistency certification, the person will not be required to submit additional consistency certifications and supporting information for State agency review at the time federal applications are actually filed for the federal licenses or permits to which such concurrence applies.

(b) Unless the State agency indicates otherwise, copies of federal license or permit applications for activities described in detail in an OCS plan which has received State agency concurrence shall be sent by the person to the State agency to allow the State agency to monitor the activities. Confidential and proprietary material within such applications may be deleted.

§ 930.80 Federal permitting agency responsibility.

Following receipt of a State agency objection to a consistency certification related to federal license or permit activities described in detail in an OCS plan, the Federal agency shall not issue any of such licenses or permits except as provided in subpart H of this part.

§ 930.81 Multiple permit review.

(a) A person submitting a consistency certification for federal license or permit activities described in detail in an OCS plan is strongly encouraged to work with other Federal agencies in an effort to include, for consolidated State agency review, consistency certifications and supporting data and information applicable to OCS-related federal license or permit activities affecting any coastal use or resource which are not required to be described in detail in OCS plans but which are subject to State agency consistency review (*e.g.*, Corps of Engineer permits for the placement of structures on the OCS and for dredging and the transportation of dredged material, Environmental Protection Agency air and water quality permits for offshore operations and onshore support and processing facilities). In the event the person does not consolidate such OCS-related permit activities with the State agency's review of the OCS plan, such activities will remain subject to individual State agency review under the requirements of subpart D of this part.

(b) A State agency objection to one or more of the OCS-related federal license or permit activities submitted for consolidated review shall not prevent

the person from receiving Federal agency approval:

(1) For those OCS-related license or permit activities found by the State agency to be consistent with the management program; and

(2) For the license or permit activities described in detail in the OCS plan provided the State agency concurs with the consistency certification for such plan. Similarly, a State agency objection to the consistency certification for an OCS plan shall not prevent the person from receiving Federal agency approval for those OCS-related license or permit activities determined by the State agency to be consistent with the management program.

§ 930.82 Amended OCS plans.

If the State agency objects to the person's OCS plan consistency certification, and/or if, pursuant to subpart H of this part, the Secretary does not determine that each of the objected to federal license or permit activities described in detail in such plan is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, and if the person still intends to conduct the activities described in the OCS plan, the person shall submit an amended plan to the Secretary of the Interior or designee and to the State agency along with a consistency certification and data and information necessary to support the amended consistency certification. The data and information shall specifically describe modifications made to the original OCS plan, and the manner in which such modifications will ensure that all of the proposed federal license or permit activities described in detail in the amended plan will be conducted in a manner consistent with the management program.

§ 930.83 Review of amended OCS plans; public notice.

After receipt of a copy of the amended OCS plan, consistency certification, and necessary data and information, State agency review shall begin. The requirements of §§ 930.77, 930.78, and 930.79, apply to the review of amended OCS plans, except that the applicable time period for purposes of concurrence by conclusive presumption shall be three months instead of six months.

§ 930.84 Continuing State agency objections.

If the State agency objects to the consistency certification for an amended OCS plan, the prohibition in § 930.80 against Federal agency approval of licenses or permits for activities described in detail in such a plan applies, further Secretarial review pursuant to subpart H of this part may take place, and the development of an additional amended OCS plan and consistency certification may be required pursuant to §§ 930.82 through 930.83.

§ 930.85 Failure to comply substantially with an approved OCS plan.

(a) The Department of the Interior and State agencies shall cooperate in their efforts to monitor federally licensed or permitted activities described in detail OCS plans to make certain that such activities continue to conform to both federal and State requirements.

(b) If a State agency claims that a person is failing substantially to comply with an approved OCS plan subject to the requirements of this subpart, and such failure allegedly involves the conduct of activities affecting any coastal use or resource in a manner that is not consistent with the approved management program, the State agency shall transmit its claim to the Minerals Management Service region involved. Such claim shall include: a description of the specific activity involved and the alleged lack of compliance with the OCS plan, and a request for appropriate remedial action. A copy of the claim shall be sent to the person and the Director.

(c) If, after 30 days following a request for remedial action, the State agency still maintains that the person is failing to comply substantially with the OCS plan, the governor or State agency may file a written objection with the Director. If the Director finds that the person is failing to comply substantially with the OCS plan, the person shall submit an amended or new OCS plan along with a consistency certification and supporting information to the Secretary of the Interior or designee and to the State agency. Following such a finding by the Director, the person shall comply with the originally approved OCS plan, or with interim orders issued jointly by the Director and the Minerals Management Service, pending approval of the amended or new OCS plan. Sections 930.82 through 930.84 shall apply to further State agency review of the consistency certification for the amended or new plan.

(d) A person shall be found to have failed substantially to comply with an approved OCS plan if the State agency claims and the Director finds that one or more of the activities described in detail in the OCS plan which affects any coastal use or resource are being conducted or are having an effect on any coastal use or resource substantially different than originally described by the person in the plan or accompanying information and, as a result, the activities are no longer being conducted in a manner consistent with the management program. The Director may make a finding that a person has failed substantially to comply with an approved OCS plan only after providing a reasonable opportunity for the person and the Secretary of the Interior to review the State agency's objection and to submit comments for the Director's consideration.

Subpart F—Consistency for Federal Assistance To State and Local Governments

§ 930.90 Objectives.

The provisions of this subpart are intended to ensure that federal assistance to applicant agencies for activities affecting any coastal use or resource is granted only when such activities are consistent with approved management programs. The provisions of subpart I of this part are intended to supplement the provisions of this subpart for federal assistance activities having interstate coastal effects.

§ 930.91 Federal assistance.

The term ''federal assistance'' means assistance provided under a federal program to an applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other form of financial aid.

§ 930.92 Applicant agency.

The term ''applicant agency'' means any unit of State or local government, or any related public entity such as a special purpose district, which, following management program approval, submits an application for federal assistance.

§ 930.93 Intergovernmental review process.

The term ''intergovernmental review process'' describes the procedures established by States pursuant to E.O. 12372, ''Intergovernmental Review of Federal Programs,'' and implementing regulations of the review of federal financial assistance to applicant agencies.

§ 930.94 State review process for consistency.

(a) States with approved management programs should review applications from applicant agencies for federal assistance in accordance with E.O. 12372 and implementing regulations.

(b) The applicant agency shall submit an application for federal assistance to the State agency for consistency review, through the intergovernmental review

process or by direct submission to the State agency, for any proposed federal assistance activity that is listed in the management program as a type of activity that will have a reasonably foreseeable effect on any coastal use or resource and occurring within the coastal zone (*see* § 930.95(a)) or within a described geographic area outside of the coastal zone (*see* § 930.95(b)).

(c) *Applicant agency evaluation.* The applicant agency shall provide to the State agency, in addition to the federal application, a brief evaluation on the relationship of the proposed activity and any reasonably foreseeable coastal effects to the enforceable policies of the management program.

§ 930.95 Guidance provided by the State agency.

(a) State agencies should include within the management program a listing of specific types of federal assistance programs subject to a consistency review. Such a listing, and any amendments, will require prior State agency consultation with affected Federal agencies and approval by the Director as a program change.

(b) In the event the State agency chooses to review applications for federal assistance activities outside of the coastal zone but with reasonably foreseeable coastal effects, the State agency shall develop a federal assistance provision within the management program generally describing the geographic area (*e.g.,* coastal floodplains) within which federal assistance activities will be subject to review. This provision, and any refinements, will require prior State agency consultation with affected Federal agencies and approval by the Director as a program change. Listed activities may have different geographic location descriptions, depending on the nature of the activity and its effects on any coastal use or resource. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries defined under the coastal nonpoint pollution control program, or other ecologically identifiable areas.

(c) The State agency shall provide copies of any federal assistance list or geographic provision, and any refinements, to Federal agencies and units of applicant agencies empowered to undertake federally assisted activities within the coastal zone or described geographic area.

(d) For review of unlisted federal assistance activities, the State agency shall follow the same procedures as it would follow for review of listed federal assistance activities outside of the coastal zone or the described geographic area. (*See* § 930.98.)

§ 930.96 Consistency review.

(a)(1) If the State agency does not object to the proposed activity, the Federal agency may grant the federal assistance to the applicant agency. Notwithstanding State agency consistency approval for the proposed project, the Federal agency may deny assistance to the applicant agency. Federal agencies should not delay processing (so long as they do not approve) applications pending receipt of a State agency approval or objection. In the event a Federal agency determines that an application will not be approved, it shall immediately notify the applicant agency and the State agency.

(2) During the period when the State agency is reviewing the activity, the applicant agency and the State agency should attempt, if necessary, to agree upon conditions which, if met by the applicant agency, would permit State agency approval. The parties shall also consult with the Federal agency responsible for providing the federal assistance to ensure that proposed conditions satisfy federal requirements as well as management program requirements.

(b) If the State agency objects to the proposed project, the State agency shall notify the applicant agency, Federal agency and the Director of the objection pursuant to § 930.63.

§ 930.97 Federal assisting agency responsibility.

Following receipt of a State agency objection, the Federal agency shall not approve assistance for the activity except as provided in subpart H of this part.

§ 930.98 Federally assisted activities outside of the coastal zone or the described geographic area.

State agencies should monitor proposed federal assistance activities outside of the coastal zone or the described geographic area (*e.g.,* by use of the intergovernmental review process, review of NEPA documents, **Federal Register**) and shall immediately notify applicant agencies, Federal agencies, and any other agency or office which may be identified by the State in its intergovernmental review process pursuant to E.O. 12372 of proposed activities which will have reasonably foreseeable coastal effects and which the State agency is reviewing for consistency with the management program. Notification shall also be sent by the State agency to the Director. The Director, in his/her discretion, may review the State agency's decision to review the activity. The Director may disapprove the State agency's decision to review the activity only if the Director finds that the activity will not affect any coastal use or resource. The Director shall be guided by the provisions in § 930.54(c). For purposes of this subpart, State agencies must inform the parties of objections within the time period permitted under the intergovernmental review process, otherwise the State agency waives its right to object to the proposed activity.

§ 930.99 Availability of mediation for federal assistance disputes.

In the event of a serious disagreement between a Federal agency and the State agency regarding whether a federal assistance activity is subject to the consistency requirement either party may request the OCRM mediation or Secretarial mediation services provided for in subpart G of this part. The existence of a serious disagreement will not relieve the Federal agency from the responsibility for withholding federal assistance for the activity pending satisfaction of the requirements of this subpart, except in cases where the Director has disapproved a State agency decision to review an activity.

§ 930.100 Remedial action for previously reviewed activities.

(a) Federal and State agencies shall cooperate in their efforts to monitor federal assistance activities in order to make certain that such activities continue to conform to both federal and State requirements.

(b) The State agency shall notify the relevant Federal agency representative for the area involved of any federal assistance activity which the State agency claims was:

(1) Previously determined to be consistent with the management program, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result, is no longer consistent with the management program, or

(2) Previously determined not to be a project affecting any coastal use or resource, but which the State agency later maintains is being conducted or is having an effect on any coastal use or resource substantially different than originally described and, as a result the project affects a coastal use or resource in a manner inconsistent with the management program.

(c) The State agency notification shall include:

(1) A description of the activity involved and the alleged lack of compliance with the management program;

(2) supporting information; and

(3) a request for appropriate remedial action. A copy of the request shall be sent to the applicant agency and the Director.

(d) If, after 30 days following a request for remedial action, the State agency still maintains that the applicant agency is failing to comply substantially with the management program, the State agency may file a written objection with the Director. If the Director finds that the applicant agency is conducting an activity that is substantially different from the approved activity, the State agency may reinitiate its review of the activity, or the applicant agency may conduct the activity as it was originally approved.

(e) An applicant agency shall be found to be conducting an activity substantially different from the approved activity if the State agency claims and the Director finds that the activity affects any coastal use or resource substantially different than originally determined by the State agency and, as a result, the activity is no longer being conducted in a manner consistent with the management program. The Director may make a finding that an applicant agency is conducting an activity substantially different from the approved activity only after providing a reasonable opportunity for the applicant agency and the Federal agency to review the State agency's objection and to submit comments for the Director's consideration.

§ 930.101 Supplemental coordination for proposed activities.

(a) For federal assistance activities that were previously determined by the State agency to be consistent with the management program, but which have not yet begun, the applicant agency shall further coordinate with the State agency if the proposed activity will affect any coastal use or resource substantially different than originally described. Substantially different coastal effects are reasonably foreseeable if:

(1) The applicant agency makes substantial changes in the proposed activity that are relevant to management program enforceable policies; or (2) There are significant new circumstances or information relevant to the proposed activity and the proposed activity's effect on any coastal use or resource.

(b) The State agency may notify the applicant agency, the Federal agency and the Director of proposed activities which the State agency believes should be subject to supplemental coordination. The State agency's notification shall include information supporting a finding of substantially different coastal effects than originally described and the relevant enforceable policies, and may recommend modifications to the proposed activity (if any) that would allow the applicant agency to implement the proposed activity consistent with the management program. State agency notification under paragraph (b) of this section does not remove the requirement under paragraph (a) of this section for applicant agencies to notify State agencies.

Subpart G—Secretarial Mediation

§ 930.110 Objectives.

The purpose of this subpart is to describe mediation procedures which Federal and State agencies may use to attempt to resolve serious disagreements which arise during the administration of approved management programs.

§ 930.111 OCRM mediation.

The availability of mediation does not preclude use by the parties of alternative means for resolving their disagreement. In the event a serious disagreement arises, the parties are strongly encouraged to make every effort to resolve the disagreement informally. OCRM shall be available to assist the parties in these efforts.

§ 930.112 Request for Secretarial mediation.

(a) The Secretary or other head of a Federal agency, or the Governor or the State agency, may notify the Secretary in writing of the existence of a serious disagreement, and may request that the Secretary seek to mediate the disagreement. A copy of the written request must be sent to the agency with which the requesting agency disagrees, to the Assistant Administrator, and to the Director.

(b) Within 15 days following receipt of a request for mediation the disagreeing agency shall transmit a written response to the Secretary, and to the agency requesting mediation, indicating whether it wishes to participate in the mediation process. If the disagreeing agency declines the offer to enter into mediation efforts, it must indicate the basis for its refusal in its response. Upon receipt of a refusal to participate in mediation efforts, the Secretary shall seek to persuade the disagreeing agency to reconsider its decision and enter into mediation efforts. If the disagreeing agencies do not all agree to participate, the Secretary will cease efforts to provide mediation assistance.

§ 930.113 Public hearings.

(a) If the parties agree to the mediation process, the Secretary shall appoint a hearing officer who shall schedule a hearing in the local area concerned. The hearing officer shall give the parties at least 30 days notice of the time and place set for the hearing and shall provide timely public notice of the hearing.

(b) At the time public notice is provided, the Federal and State agencies shall provide the public with convenient access to public data and information related to the serious disagreement.

(c) Hearings shall be informal and shall be conducted by the hearing officer with the objective of securing in a timely fashion information related to the disagreement. The Federal and State agencies, as well as other interested parties, may offer information at the hearing subject to the hearing officer's supervision as to the extent and manner of presentation. A party may also provide the hearing officer with written comments. Hearings will be recorded and the hearing officer shall provide transcripts and copies of written information offered at the hearing to the Federal and State agency parties. The public may inspect and copy the transcripts and written information provided to these agencies.

§ 930.114 Secretarial mediation efforts.

(a) Following the close of the hearing, the hearing officer shall transmit the hearing record to the Secretary. Upon receipt of the hearing record, the Secretary shall schedule a mediation conference to be attended by representatives from the Office of the Secretary, the disagreeing Federal and State agencies, and any other interested parties whose participation is deemed necessary by the Secretary. The Secretary shall provide the parties at least 10 days notice of the time and place set for the mediation conference.

(b) Secretarial mediation efforts shall last only so long as the Federal and State agencies agree to participate. The Secretary shall confer with the Executive Office of the President, as necessary, during the mediation process.

§ 930.115 Termination of mediation.

Mediation shall terminate:

(a) At any time the Federal and State agencies agree to a resolution of the serious disagreement,

(b) If one of the agencies withdraws from mediation,

(c) In the event the agencies fail to reach a resolution of the disagreement within 15 days following Secretarial conference efforts, and the agencies do not agree to extend mediation beyond that period, or

(d) For other good cause.

§ 930.116 Judicial review.

The availability of the mediation services provided in this subpart is not intended expressly or implicitly to limit the parties' use of alternate forums to resolve disputes. Specifically, judicial review where otherwise available by law may be sought by any party to a serious disagreement without first having exhausted the mediation process provided for in this subpart.

Subpart H—Appeal to the Secretary for Review Related to the Objectives of the Act and National Security Interests

§ 930.120 Objectives.

This subpart sets forth the procedures by which the Secretary may find that a federal license or permit activity, including those described in detail in an OCS plan, or a federal assistance activity, which a State agency has found to be inconsistent with the enforceable policies of the management program, may be federally approved because the activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security.

§ 930.121 Consistent with the objectives or purposes of the Act.

A federal license or permit activity, or a federal assistance activity, is ''consistent with the objectives or purposes of the Act'' if it satisfies each of the following three requirements:

(a) The activity furthers the national interest as articulated in § 302 or § 303 of the Act, in a significant or substantial manner,

(b) The national interest furthered by the activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively.

(c) There is no reasonable alternative available which would permit the activity to be conducted in a manner consistent with the enforceable policies of the management program. When determining whether a reasonable alternative is available, the Secretary may consider but is not limited to considering, previous appeal decisions, alternatives described in objection letters and alternatives and other new information described during the appeal.

§ 930.122 Necessary in the interest of national security.

A federal license or permit activity, or a federal assistance activity, is ''necessary in the interest of national security'' if a national defense or other national security interest would be significantly impaired were the activity not permitted to go forward as proposed. Secretarial review of national security issues shall be aided by information submitted by the Department of Defense or other interested Federal agencies. The views of such agencies, while not binding, shall be given considerable weight by the Secretary. The Secretary will seek information to determine whether the objected-to activity directly supports national defense or other essential national security objectives.

§ 930.123 Appellant and Federal agency.

(a) The ''appellant'' is the applicant, person or applicant agency submitting an appeal to the Secretary pursuant to this subpart.

(b) For the purposes of this subpart, the ''Federal agency'' is the agency whose proposed issuance of a license or permit or grant of assistance is the subject of the appeal to the Secretary.

§ 930.124 Computation of time.

(a) The first day of any period of time allowed or prescribed by these rules, shall not be included in the computation of the designated period of time. The last day of the time period computed shall be included unless it is a Saturday, Sunday or a Federal holiday, in which case the period runs until the next day which is not one of the aforementioned days.

§ 930.125 Notice of appeal and application fee to the Secretary.

(a) To obtain Secretarial review of a State agency objection, the appellant shall file a notice of appeal with the Secretary within 30 days of receipt of a State agency objection.

(b) The appellant's notice of appeal shall be accompanied by payment of an application fee or a request for a waiver of such fees. An appeal involving a project valued in excess of $1 million shall be considered a major appeal and the application fee is $500.00. All other appeals shall be considered minor appeals and the application fee is $200.00.

(c) The appellant shall send the Notice of appeal to the Secretary, Herbert C. Hoover Building, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; a copy of the notice of appeal to the objecting State agency; and to the Assistant General Counsel for Ocean Services (GCOS), 1305 East West Highway, Room 6111 SSMC 4, Silver Spring, Maryland 20910.

(d) No extension of time will be permitted for the filing of a notice of appeal.

(e) The Secretary shall waive any or all fees if the Secretary concludes upon review of the appellant's fee waiver request that such fees impose an economic hardship on appellant. The request for a waiver and demonstration of economic hardship shall accompany the notice of appeal. If the Secretary denies a request for a waiver and the appellant wishes to continue with the appeal, the appellant shall submit the appropriate fees to the Secretary within 20 days of receipt of the Secretary's denial. If the fees are not received by the 20th day, then the Secretary shall dismiss the appeal.

§ 930.126 Consistency appeal processing fees.

The Secretary shall collect as a processing fee such other fees from the appellant as are necessary to recover the full costs of administering and processing appeals to the Secretary under section 307(c) of the Act. All processing fees shall be assessed and collected no later than 60 days after publication of the Federal Register Notice closing the decision record. Failure to submit processing fees shall be grounds for extending the time for issuance of a decision pursuant to section 319(a)(2) of the Act (16 USC 1465(a)(2)) and § 930.130 of this subpart.

§ 930.127 Briefs and supporting materials.

(a) The Secretary shall establish a schedule of dates and time periods for submission of briefs and supporting materials by the appellant and the State agency.

(b) Both the appellant and State agency shall send copies of their briefs, supporting materials and all requests and communications to the Secretary, each other, and to the Assistant General Counsel for Ocean Services (GCOS), NOAA, 1305 East West Highway, Room 6111 SSMC4, Silver Spring, Maryland 20910.

(c) The Secretary may extend the time for submission of briefs and supporting materials on his own initiative or at the request of a party so long as the request is received prior to the date prescribed in the briefing schedule. A copy of the request for an extension of time shall be sent to the Assistant General Counsel for Ocean Services.

(d) Where a State agency objection is based in whole or in part on a lack of information, the Secretary shall limit

the record on appeal to information previously submitted to the State agency and relevant comments thereon, except as provided for in sections 930.129(b) and (c).

§ 930.128 Public notice, comment period, and public hearing.

(a) The Secretary shall provide timely public notice of the appeal after the receipt of the notice of appeal, and payment of application fees. At a minimum, public notice shall be provided in the **Federal Register** and the immediate area of the coastal zone likely to be affected by the proposed activity.

(b) The Secretary shall provide an opportunity for public comment on the appeal. The public shall be afforded no less than 30 days to comment on the appeal. Notice of the public comment period shall take the same form as Notice required in paragraph (a) of this section.

(c) The Secretary shall afford interested Federal agencies, including the Federal agency whose proposed action is the subject of the appeal, with an opportunity to comment on the appeal. The Secretary shall afford notice to the Federal agencies of the time for filing their comments.

(d) The Secretary may extend the time for submitting comments on his own initiative or at the written request of a party or interested Federal agency, so long as the request is received prior to the comment date identified in the public notice. A copy of the request for an extension of time shall be sent to the Assistant General Counsel for Ocean Services.

(e) The Secretary may hold a public hearing in response to a request or on his own initiative. If a hearing is held by the Secretary, it shall be guided by the procedures described within § 930.113.

§ 930.129 Dismissal, remand, stay, and procedural override.

(a) The Secretary may dismiss an appeal for good cause. A dismissal is the final agency action. Good cause shall include, but is not limited to:

(1) Failure of the appellant to submit a notice of appeal within the required 30-day period.

(2) Failure of the appellant to submit a brief or supporting materials within the required period;

(3) Failure of the appellant to pay a required fee;

(4) Denial by the Federal agency of the federal license, permit or assistance application; or

(5) Failure of the appellant to base the appeal on grounds that the proposed activity is either consistent with the objectives or purposes of the Act, or necessary in the interest of national security.

(b) If the State agency's consistency objection is not in compliance with section 307 of the Act and the regulations contained in subparts D, E, F, or I of this part, the Secretary shall override the State's objection. The Secretary may make this determination as a threshold matter.

(c) The Secretary may stay the processing of an appeal on her own initiative or upon request of an appellant or State agency for the following purposes:

(1) to allow additional information to be developed relevant to the analysis required of the Secretary in 930.121,

(2) to allow mediation or settlement negotiations to occur between the applicant and State agency, or

(3) to allow for remand pursuant to paragraph (d) of this section.

(d) The Secretary may stay the processing of an appeal and remand it to the State agency for reconsideration of the project's consistency with the enforceable policies of the State's management program if significant new information relevant to the State agency's objection, that was not provided to the State agency as part of its consistency review, is submitted to the Secretary by the appellant, the public or a Federal agency. The Secretary shall determine a time period for the remand to the State not to exceed three months. If the State agency responds that it still objects to the activity, then the Secretary shall continue to process the appeal and shall include the significant new information in the decision record. If the State agency concurs, then the Secretary shall dismiss the appeal and notify the Federal agency that the activity may be federally approved.

§ 930.130 Closure of the decision record and issuance of decision.

(a) No sooner than 30 days after the close of the public comment period, the Secretary shall publish a notice in the Federal Register stating that the decision record is closed and that no further information, briefs or comments will be considered in deciding the appeal.

(b) No later than 90 days after the closure of the decision record the Secretary shall issue a decision or publish a notice in the **Federal Register** explaining why a decision cannot be issued at that time. The Secretary shall issue a decision within 45 days of the publication of such notice.

(c) The decision of the Secretary shall constitute final agency action for the purposes of the Administrative Procedure Act.

(d) The appellant bears the burden of submitting evidence in support of its appeal and the burden of persuasion. In reviewing an appeal, the Secretary shall find that a proposed federal license or permit activity, or a federal assistance activity, is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, when the information submitted supports this conclusion.

(e)(1) If the Secretary finds that the proposed activity is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security, the Federal agency may approve the activity.

(2) If the Secretary does not make either of these findings, the Federal agency shall not approve the activity.

§ 930.131 Review initiated by the Secretary.

(a) The Secretary may, on her own initiative, choose to consider whether a federal license or permit activity, or a federal assistance activity, is consistent with the objectives or purposes of the Act, or is necessary in the interest of national security. Secretarial review shall only be initiated after the completion of State agency review pursuant to the relevant subpart. The Secretary's decision to review the activity may result from an independent concern regarding the activity or a request from interested parties. If the Secretary decides to initiate review, notification shall be sent to the applicant, person or applicant agency, and to the relevant Federal and State agencies. The notice shall include a statement describing the reasons for the review.

(b) With the exception of application and processing fees, all other provisions under this subpart governing the processing and administering of appeals will apply to Secretarial reviews initiated under this section.

Subpart I—Consistency of Federal Activities Having Interstate Coastal Effects

§ 930.150 Objectives.

(a) A federal activity may affect coastal uses or resources of a State other than the State in which the activity will occur. Effective coastal management is fostered by ensuring that activities having such reasonably foreseeable interstate coastal effects are conducted consistent with the enforceable policies of the management program of each affected State.

(b) The application of the federal consistency requirement to activities

having interstate coastal effects is addressed by this subpart in order to encourage cooperation among States in dealing with activities having interstate coastal effects, and to provide States, local governments, Federal agencies, and the public with a predictable framework for evaluating the consistency of these federal activities under the Act.

§ 930.151 Interstate coastal effect.

The term ''interstate coastal effect'' means any reasonably foreseeable effect resulting from a federal action occurring in one State of the United States on any coastal use or resource of another State that has a federally approved management program. Effects are not just environmental effects, but include effects on coastal uses. Effects include both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects are effects resulting from the incremental impact of the federal action when added to other past, present, and reasonably foreseeable actions, regardless of what person(s) undertake(s) such actions. The term ''affects'' means have an effect on. Effects on any coastal use or resource may also be referred to as ''coastal effects.''

§ 930.152 Application.

(a) This subpart applies to federal actions having interstate coastal effects, and supplements the relevant requirements contained in 15 CFR part 930, subparts C (Consistency for Federal Agency Activities), D (Consistency for Activities Requiring a Federal License or Permit), E (Consistency for OCS Exploration, Development and Production Activities) and F (Consistency for Federal Assistance to State and Local Governments). Except as otherwise provided by this subpart, the requirements of other relevant subparts of part 930 apply to activities having interstate coastal effects.

(b) Federal consistency is a requirement on federal actions affecting any coastal use or resource of a State with a federally-approved management program, regardless of the activities' locations (including States without a federally approved management program). The federal consistency requirement does not alter a coastal State's jurisdiction. The federal consistency requirement does not give States the authority to review the application of laws, regulations, or policies of any other State. Rather, the Act allows a management program to review federal actions and may preclude federal action as a result of a State objection, even if the objecting State is not the State in which the activity will occur. Such objections to interstate activities under subparts D, E and F may be overridden by the Secretary pursuant to subpart H of this part.

§ 930.153 Coordination between States in developing coastal management policies.

Coastal States are encouraged to give high priority to:

(a) Coordinating State coastal management planning, policies, and programs with respect to contiguous areas of such States;

(b) Studying, planning, and implementing unified coastal management policies with respect to such areas; and

(c) Establishing an effective mechanism, and adopting a federal-State consultation procedure, for the identification, examination, and cooperative resolution of mutual problems with respect to activities having interstate coastal effects.

§ 930.154 Listing activities subject to routine interstate consistency review.

(a) *Geographic location of listed activities.* Each coastal State intending to conduct a consistency review of federal activities occurring in another State shall:

(1) List those Federal agency activities, federal license or permit activities, and federal assistance activities that the State intends to routinely review for consistency; and

(2) Generally describe the geographic location for each type of listed activity.

(b) In establishing the geographic location of interstate consistency review, each State must notify and consult with the State in which the listed activity will occur, as well as with relevant Federal agencies.

(c) *Demonstrate effects.* In describing the geographic location for interstate consistency reviews, the State agency shall provide information to the Director that coastal effects from listed activities occurring within the geographic area are reasonably foreseeable. Listed activities may have different geographic location descriptions, depending on the nature of the activity and its effects on any coastal use or resource. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries under the State's coastal nonpoint pollution control program, or other ecologically identifiable areas.

(d) *Director approval.* State agencies shall submit their lists and geographic location descriptions developed under this section to the Director for approval as a routine program change under subpart H of 15 CFR part 923. Each State submitting this program change shall include evidence of consultation with States in which the activity will occur, evidence of consultation with relevant Federal agencies, and any agreements with other States and Federal agencies regarding coordination of activities.

(e) *State failure to list interstate activities.* A coastal State that fails to list federal activities subject to interstate review, or to describe the geographic location for these activities, under paragraphs (a) through (d) of this section, may not exercise its right to review activities occurring in other States, until the State meets the listing requirements. The listing of activities subject to interstate consistency review, and the description of the geographic location for those listed activities, should ensure that coastal States have the opportunity to review relevant activities occurring in other States. States may amend their lists and geographic location descriptions pursuant to the requirements of this subpart and subpart H of 15 CFR part 923. States which have complied with paragraphs (a) through (d) of this section may also use the procedure at § 930.54 to review unlisted activities. States will have a transition period of 18 months from the date this rule takes effect. In that time a State may review an interstate activity pursuant to § 930.54 of this part. After the transition period States must comply with this subpart in order to review interstate activities.

§ 930.155 Federal and State agency coordination.

(a) Identifying activities subject to the consistency requirement. The provisions of this subpart are neither a substitute for nor eliminate the statutory requirement of federal consistency with the enforceable policies of management programs for all activities affecting any coastal use or resource. Federal agencies shall submit consistency determinations to relevant State agencies for activities having coastal effects, regardless of location, and regardless of whether the activity is listed.

(b) *Notifying affected States.* Federal agencies, applicants or applicant agencies proposing activities listed for interstate consistency review, or determined by the Federal agency, applicant or applicant agency to have an effect on any coastal use or resource, shall notify each affected coastal State of the proposed activity. State agencies

may also notify Federal agencies and applicants of listed and unlisted activities subject to State agency review and the requirements of this subpart.

(c) *Notice of intent to review.* Within 30 days from receipt of the consistency determination or certification and necessary data and information, or within 30 days from receipt of notice of a listed federal assistance activity, each State intending to review an activity occurring in another State must notify the applicant or applicant agency (if any), the Federal agency, the State in which the activity will occur (either the State's management program, or if the State does not have a management program, the Governor's office), and the Director, of its intent to review the activity for consistency. The State's notice to the parties must be received by the 30th day after receipt of the consistency determination or certification. If a State fails, within the 30 days, to notify the applicant or applicant agency (if any), the Federal agency, the State in which the activity will occur, and the Director, of its intent to review the activity, then the State waives its right to review the activity for consistency. The waiver does not apply where the State intending to review the activity does not receive notice of the activity.

§ 930.156 Content of a consistency determination or certification and State agency response.

(a) The Federal agency or applicant is encouraged to prepare one determination or certification that will satisfy the requirements of all affected States with approved management programs.

(b) State agency responses shall follow the applicable requirements contained in subparts C, D, E and F of this part.

§ 930.157 Mediation and informal negotiations.

The relevant provisions contained in subpart G of this part are available for resolution of disputes between affected States, relevant Federal agencies, and applicants or applicant agencies The parties to the dispute are also encouraged to use alternative means for resolving their disagreement. OCRM shall be available to assist the parties in these efforts.

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the San Bernadino Kangaroo Rat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH07

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the San Bernardino Kangaroo Rat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) pursuant to the Endangered Species Act of 1973, as amended (Act). A total of approximately 22,423 hectares (55,408 acres) in San Bernardino and Riverside Counties, California, are proposed as critical habitat for the San Bernardino kangaroo rat.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. The primary constituent elements for the San Bernardino kangaroo rat are those habitat components that are essential for the primary biological needs of foraging, reproducing, rearing of young, intra-specific communication, dispersal, genetic exchange, or sheltering. All areas proposed for designation as critical habitat for the San Bernardino kangaroo rat contain one or more of the primary constituent elements essential to the conservation of the species.

If this proposed rule is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency; and, Federal agencies proposing actions that may affect the area designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act. Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will consider all comments on the proposed rule received from interested parties by February 6, 2001. Public hearing requests must be received by January 22, 2001.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

1. You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

2. You may hand-deliver written comments to our Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California.

3. You may send comments by electronic mail (e-mail) to FW1CFWO__sbkr@fws.gov. See the Public Comments Solicited section below for file format and other information about electronic filing.

Comments and materials received, and supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office.

FOR FURTHER INFORMATION CONTACT: Ken S. Berg, Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone: 760/431–9440; facsimile 760/431–9624).

SUPPLEMENTARY INFORMATION:

Background

The San Bernardino kangaroo rat (*Dipodomys merriami parvus*) is one of 19 recognized subspecies of Merriam's kangaroo rat (*D. merriami*), a widespread species distributed throughout arid regions of the western United States and northwestern Mexico (Hall and Kelson 1959, Williams *et al.* 1993). In coastal southern California, Merriam's kangaroo rat is the only species of kangaroo rat with four toes on each of its hind feet. The San Bernardino kangaroo rat has a body length of about 95 millimeters (mm) (3.7 inches (in)) and a total length of 230 to 235 mm (9 to 9.3 in). The hind foot measures less than 36 mm (1.4 in) in length. The body color is pale yellow with a heavy overwash of dusky brown. The tail stripes are medium to dark brown and the foot pads and tail hairs are dark brown. The flanks and cheeks of the subspecies are dusky (Lidicker 1960). The San Bernardino kangaroo rat is considerably darker and smaller than either of the other two subspecies of Merriam's kangaroo rat that occur in southern California, *D. merriami merriami* and *D. merriami collinus*. The San Bernardino kangaroo rat, endemic to southern California, is one of the most highly differentiated subspecies of Merriam's kangaroo rat and, according to Lidicker (1960), ''it seems likely that it has achieved nearly species rank.''

The San Bernardino kangaroo rat, a member of the family Heteromyidae, was first described by Rhoades (1894) under the name *Dipodomys parvus* from specimens collected by R.B. Herron in Reche Canyon, San Bernardino County, California. Elliot reduced *D. parvus* to a subspecies of *D. merriami* (*D. merriami parvus*) in 1901, a taxonomic treatment of the species which was confirmed by Hall and Kelson (1959) and Williams *et al.* (1993). The San Bernardino kangaroo rat appears to be separated from Merriam's kangaroo rat (*D. merriami merriami*) at the northernmost extent of its range near Cajon Pass by an 8 to 13 kilometer (km) (5 to 8 mile (mi)) gap of unsuitable habitat.

The historical range of this species extends from the San Bernardino Valley in San Bernardino County to the Menifee Valley in Riverside County (Hall and Kelson 1959, Lidicker 1960). Within this range, the San Bernardino kangaroo rat was known from more than 25 localities (McKernan 1993). From the early 1880s to the early 1930s, the San Bernardino kangaroo rat was a common resident of the San Bernardino and San Jacinto Valleys of southern California (Lidicker 1960). At the time of listing, based on the distribution of suitable soils and museum collections of this species, we estimated that the historical range encompassed approximately 130,587 hectares (ha) (326,467 acres (ac)) (U.S. Fish and Wildlife Service unpubl. GIS maps, 1998; in 63 FR 51005). Recent studies indicate that the species occupies a wider range of soil and vegetation types than previously thought (Braden and McKernan 2000), which suggests that the species' historical range may have been larger than we estimated at the time of listing.

Although the entire area of the historical range would not have been occupied at any given time due to hydrological processes and resultant variability in habitat suitability, the San Bernardino kangaroo rat was widely distributed across the San Bernardino and San Jacinto valleys. By the 1930s, suitable habitat had been estimated to have been reduced to approximately 11,200 ha (28,000 ac) (McKernan 1997). Habitat destruction continued such that in 1997 the San Bernardino kangaroo rat was thought to occupy only 1,299 ha (3,247 ac) of suitable habitat divided unequally among seven locations

(McKernan 1997). At the time of listing, we also estimated that an additional 5,277 ha (13,193 ac) of additional habitat that was likely occupied by the San Bernardino kangaroo rat was distributed within the Santa Ana River, Lytle and Cajon creeks, and San Jacinto River. Unlike the three largest habitat blocks, we did not provide an estimate for additional habitat that was likely occupied for the smaller remnant populations at City Creek, Etiwanda alluvial fan and wash, Reiche Canyon, and South Bloomington (including Jurupa Hills). At the time of listing, we discounted approximately 1,358 ha (3,396 ac) of the 5,277 ha (13,193 ac) of additional habitat as being too mature or degraded to support San Bernardino kangaroo rats. Additional research has indicated that San Bernardino kangaroo rats occupy mature alluvial scrub, coastal sage scrub, and even chaparral vegetation types (McKernan 2000). Thus, a minimum of approximately 6,576 ha (16,440 ac) of habitat was likely occupied at the time of listing.

Additional research has expanded our knowledge on the distribution and habitat needs of the San Bernardino kangaroo rat. We are proposing critical habitat for the Santa Ana River (including City, Plunge, and San Timoteo Creeks), Lytle and Cajon Creeks, San Jacinto River and Bautista Creek, Etiwanda alluvial fan (including the Etiwanda Wash), Reche Canyon, and Jurupa Hills-South Bloomington (McKernan 1997; California Natural Diversity Data Base (CNDDB) 2000; University of California, Riverside species database 2000; database for the San Bernardino Valley-Wide Multiple Species Habitat Conservation Plan (MSHCP) 2000; and section 10(a)(1)(A) survey reports 1998–2000). The areas proposed as critical habitat are an expansion of the known locations of the San Bernardino kangaroo rat identified in the final listing rule and are within the known geographical area for this species. Other known populations of the San Bernardino kangaroo rat have not been proposed as critical habitat. We did not propose critical habitat for small scattered populations or habitats which were in areas that were highly fragmented by urban and agricultural development and/or were no longer subject to hydrological and geomorphological processes that would naturally maintain alluvial scrub vegetation.

Habitat for the San Bernardino kangaroo rat has been severely reduced and fragmented by development and related activities in the San Bernardino and San Jacinto valleys, resulting in reduced habitat patch size and increased distances between patches of suitable habitat. As noted by Andren (1994) in a discussion of highly fragmented landscapes, reduced habitat patch size and isolation exacerbate the effects of habitat loss on a species' persistence (*i.e.,* the loss of species, or decline in population size, will be greater than expected from habitat loss alone) and may preclude recolonization of suitable habitat following local extinction.

The loss of native vertebrates, including rodents, due to habitat fragmentation is well documented (Soule *et al.* 1992, Andren 1994, Bolger *et al.* 1997). Results of habitat fragmentation on rodents may include increased extinction rates due to increased vulnerability to random demographic (population characteristics such as age and sex structure) and environmental events (Hanski 1994, Bolger *et al.* 1997). For example, isolated populations are more susceptible to local extinction by manmade or natural events, such as disease or floods, than are larger, more connected populations. Furthermore, small populations are more likely to experience detrimental effects associated with reproduction, including genetic drift, inbreeding depression, and a loss of genetic variability; factors that increase the risk of extinction (Caughley 1994, Lacy 1997). Past and ongoing causes of fragmentation of San Bernardino kangaroo rat habitat include conversion of lands to urban, industrial, agricultural, and recreational uses; construction of roads and freeways; and development of flood control structures such as dams, levees, and channels. The effect of these human-caused disturbances is two-fold—(1) they reduce the amount of suitable habitat for the San Bernardino kangaroo rat, breaking large areas into smaller patches, and (2) they act as barriers to movement between the remaining suitable habitat patches.

San Bernardino kangaroo rats are typically found on alluvial fans (relatively flat or gently sloping masses of loose rock, gravel, and sand deposited by a stream as it flows into a valley or upon a plain), flood plains, along washes, in adjacent upland areas containing appropriate physical and vegetative characteristics (McKernan 1997), and in areas with historic braided channels (McKernan *in litt.* 1999). These areas consist of sand, loam, sandy loam, or gravelly soils (McKernan 1993, Braden and McKernan 2000) that are associated with alluvial processes (*i.e.,* the deposition of clay, silt, sand, gravel, or similar material by running water such as rivers and streams; debris flows). San Bernardino kangaroo rats also occupy areas where sandy soils are at least partially deposited by winds (*e.g.,* northwest of the Jurupa Hills) (McKernan 1997). These soils allow kangaroo rats to dig simple, shallow burrow systems (McKernan 1997) and typically support alluvial sage scrub and chaparral vegetation.

Alluvial sage scrub has been described as a variant of coastal sage scrub (Smith 1980) and is also referred to as Riversidean alluvial fan scrub, alluvial fan sage scrub, cismontane alluvial scrub, alluvial fan scrub, or by Holland (1986) as Riversidian Alluvial Fan Sage Scrub. Alluvial scrub is considered a distinct and rare plant community found primarily on alluvial fans and flood plains along the southern bases of the Transverse Ranges and portions of the Peninsular Ranges in southern California (CNDDB 1993). This relatively open vegetation type is adapted to periodic flooding and erosion (Hanes *et al.* 1989) and is comprised of an assortment of drought-deciduous shrubs and larger evergreen woody shrubs characteristic of both coastal sage scrub and chaparral communities (Smith 1980).

Three phases of alluvial sage scrub have been described: pioneer, intermediate, and mature. The phases are thought to correspond to factors such as flood scour, distance from flood channel, time since last catastrophic flood, and substrate features (Smith 1980, Hanes *et al.* 1989). Under natural conditions, flood waters periodically break out of the main river channel in a complex pattern, resulting in a braided appearance to the flood plain and a mosaic of vegetation stages. Pioneer sage scrub, the earliest phase, is subject to frequent hydrological disturbance, the sparse vegetation usually renewed by frequent floods (Smith 1980, Hanes *et al.* 1989). The intermediate phase, which typically is found on benches between the active channel and mature flood plain terraces, is subject to periodic flooding at longer intervals. The vegetation of early and intermediate stages is relatively open, and supports the highest densities of the San Bernardino kangaroo rat (McKernan 1997).

The latest, or mature, phase of alluvial sage scrub is rarely affected by flooding and supports the highest plant density (Smith 1980). The mature terraces and upland areas adjacent to them supporting the oldest phase of sage scrub provide an important refugia for San Bernardino kangaroo rats during flood events. Although mature areas are generally used less frequently or occupied at lower densities than those

supporting earlier phases, these areas are critical to the long-term survival of the species (*i.e.,* prevent extinction) by providing a source population for re-colonization following catastrophic flooding events in which kangaroo rats inhabiting lower areas of the flood plain drown (McKernan, pers. comm. 2000).

Alluvial scrub vegetation includes plant species that are often associated with coastal sage scrub, chaparral, or desert transition communities. Common plant species include: Scalebroom (*Lepidospartum squamatum*), California buckwheat (*Eriogonum fasciculatum*), wooly yerba santa (*Eriodictyon crassifolium*), hairy yerba santa (*Eriodictyon trichocalyx*), our Lord's candle (*Yucca whipplei*), sugar bush (*Rhus ovata*), lemonadeberry (*Rhus integrifolia*), laurel sumac (*Malosma laurina*), California juniper (*Juniperus californicus*), mulefat (*Baccharis salicifolia*), showy penstemon (*Penstemon spectabilis*), golden aster (*Heterotheca villosa*), tall buckwheat (*Eriogonum elongatum*), brittle bush (*Encelia farinosa*), prickly pear and cholla (*Opuntia* spp.), chamise (*Adenostoma fasciculatum*), holly-leaf cherry (*Prunus ilicifolia*), oaks (*Quercus* spp.), white sage (*Salvia apiana*), and annual forbs (*e.g.,* phacelia (*Phacelia* spp.), lupine (*Lupinus* spp.), and popcorn flower (*Plagiobothrys* spp.)), and native and nonnative grasses.

Similar to other subspecies of Merriam's kangaroo rat, the San Bernardino kangaroo rat prefers moderately open habitats characterized by low shrub canopy cover (McKernan 1997). However, the species uses areas of denser vegetation (Braden and McKernan 2000), and McKernan (pers. comm. 2000) stated that such areas are essential to San Bernardino kangaroo rat conservation. Research conducted by Braden and McKernan (2000) during 1998 and 1999 demonstrated that areas with late phases of the flood plain vegetation, such as mature alluvial fan sage scrub and associated coastal sage scrub and chaparral, including some areas of moderate to dense vegetation such as nonnative grasslands, are at least periodically occupied by the species.

A study of San Bernardino kangaroo rats conducted by Braden and McKernan (2000) provided additional new, specific data about the species' habitat characteristics. Braden and McKernan determined: (1) Perennial cover varies from 0 to 100 percent, (2) annual cover (primarily nonnative grasses) varies from 0 to 70 percent, (3) the proportion of surface fine sands varies from 0 to 100 percent, (4) surface cover of small rock fragments varies from 0 to 90 percent, and (5) surface cover of large rock fragments varies from 0 to 51 percent. The San Bernardino kangaroo rat has also been documented in areas of human disturbance not typically associated with the species, including nonnative grasslands separating tracts of suitable habitat, margins of orchards and out-of-use vineyards (as far as 50 m (150 feet) from adjacent, suitable sage scrub), and areas of wildland/urban interface within flood plains or terraces and adjacent to occupied habitat (McKernan, *in litt.* 2000).

Areas that contain low densities of San Bernardino kangaroo rats are important for dispersal, genetic exchange, colonization of newly suitable habitat, and re-colonization of areas after severe storm events. The dynamic nature of the fluvial (river) habitat leads to a situation where not all the habitat associated with alluvial processes is suitable for the species at any point in time. However, areas generally considered unsuitable habitat, such as out-of-production vineyards and margins of orchards, can and do develop into suitable habitat for the species by natural processes (McKernan, pers. comm. 2000).

Little is known about home range size, dispersal distances, or other spatial requirements of the San Bernardino kangaroo rat. However, home ranges for the Merriam's kangaroo rat in the Palm Springs, California, area average 0.33 ha (0.8 ac) for males and 0.31 ha (0.8 ac) for females (Behrends *et al.* 1986). Furthermore, Blair (1943) reported much larger home ranges for Merriam's kangaroo rats in New Mexico, where home ranges averaged 1.7 ha (4.1 ac) for males and 1.6 ha (3.8 ac) for females. Space requirements for the San Bernardino kangaroo rat likely vary according to season, age and sex of animal, food availability, and other factors. Although outlying areas of their home ranges may overlap, *Dipodomys* adults actively defend small core areas near their burrows (Jones 1993). Home range overlap between males and between males and females is extensive, but female-female overlap is slight (Jones 1993). The degree of competition between San Bernardino kangaroo rats and sympatric (living in the same geographical area) species of kangaroo rats for food and other resources is not presently known.

Similar to other kangaroo rats, the Merriam's kangaroo rat is generally granivorous (feeds on seeds and grains) and often stores large quantities of seeds in surface caches (Reichman and Price 1993). Green vegetation and insects are also important seasonal food sources. Insects, when available, have been documented to constitute as much as 50 percent of a kangaroo rat's diet (Reichman and Price 1993).

Wilson *et al.* (1985) reported that compared to other rodents, Merriam's kangaroo rat, and heteromyids in general, have relatively low reproductive output. Rainfall and the availability of food have been cited as factors affecting kangaroo rat populations. Droughts lasting more than a year can cause rapid declines in population numbers after seed caches are depleted (Goldingay *et al.* 1997).

Little information exists on the specific types and local abundances of predators that feed on the San Bernardino kangaroo rat. Potential native predators include the common barn owl (*Tyto alba*), great horned owl (*Bubo virginianus*), long-eared owl (*Asio otus*), gray fox, (*Urocyon cinereoargenteus*), coyote (*Canis latrans*), long-tailed weasel (*Mustela frenata*), bobcat (*Felis rufus*), badger (*Taxidea taxus*), San Diego gopher snake (*Pituophis melanoleucus annectens*), California king snake (*Lampropeltis getulus californiae*), red diamond rattlesnake (*Crotalus ruber*), and southern Pacific rattlesnake (*Crotalus viridus*). Domestic cats (*Felis cattus*) are known to be predators of native rodents (Hubbs 1951, George 1974) and have the ability to reduce population sizes of rodents (Crooks and Soule 1999). Predation of San Bernardino kangaroo rats by domestic cats has been documented (McKernan, pers. comm., 1994). Continued fragmentation of habitat is likely to promote higher levels of predation by native animals (Bolger *et al.* 1997) and urban-associated animals (*e.g.,* domestic cats, opossums (*Didelphis virginianus*), and striped skunks (*Mephitis mephitis*)) as the interface between natural habitat and urban areas is increased (Churcher and Lawton 1987).

A limited amount of data exists pertaining to population dynamics of the San Bernardino kangaroo rat. Information is not currently available on several aspects of the species' life history such as fecundity (the capacity of an organism to produce offspring), survival, population age and sex structure, intra- and interspecific competition, and causes and rates of mortality. With respect to population density, Braden and McKernan (2000) documented substantial annual variation on a trapping grid in San Bernardino County, where densities ranged from 2 to 26 animals per hectare (2.47 acre). The reasons for these greatly disparate values, which represent the lowest and the second highest

population densities recorded during the 15-month study, are unknown. These fluctuations bring to light several important aspects of the species' distribution and life history which should be considered when identifying areas essential for the conservation of the species—(1) A low population density observed in an area at one point in time does not mean the area is occupied at the same low density any other month, season, or year; (2) a low population density is not an indicator of low habitat quality or low overall value of the land for the conservation of the species; (3) an abundance of San Bernardino kangaroo rats can decrease rapidly; and (4) one or more factors (*e.g.,* food availability, fecundity, disease, predation, genetics, environment) are strongly influencing the species' population dynamics in one or more areas. High-amplitude, high-frequency fluctuations in small, isolated populations make them extremely susceptible to local extinction.

Previous Federal Action

The San Bernardino kangaroo rat was designated by the Service as a category 2 candidate species for Federal listing as endangered or threatened in 1991 (56 FR 58804). Category 2 comprised taxa for which information in the possession of the Service indicated that proposing to list as endangered or threatened was possibly appropriate, but for which data on biological vulnerability and threat(s) were not available to support a proposed rule. Based on a review of status and distribution of the San Bernardino kangaroo rat, the subspecies was upgraded to a category 1 candidate for listing in 1994 (59 FR 58982). Category 1 candidate species were those species for which the Service had sufficient information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species. Upon publication of the February 28, 1996, Notice of Review (61 FR 7596), the Service ceased using category designations and included the San Bernardino kangaroo rat as a candidate species. The San Bernardino kangaroo rat was retained as a candidate species in the September 19, 1997, Notice of Review (62 FR 49401).

The San Bernardino kangaroo rat was emergency listed as endangered on January 27, 1998; concurrently, a proposal to make provisions of the emergency listing permanent also was published (63 FR 3835 and 63 FR 3877). On September 24, 1998, we published a final rule determining the San Bernardino kangaroo rat to be an endangered species (63 FR 51005).

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is designated to be endangered or threatened. According to regulations (50 CFR 424.12(a)(1)), designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat designation for the San Bernardino kangaroo rat was determined not to be prudent at the time of listing because an increase in the degree of threat could result (63 FR 51005). As detailed in the emergency rule listing the San Bernardino kangaroo rat (63 FR 3840), threats of intentional habitat vandalism or destruction (such as disking or blading) directed specifically at habitat for the San Bernardino kangaroo rat were documented. As indicated in the final listing rule (63 FR 51005), intentional destruction of areas occupied by the San Bernardino kangaroo rat and other listed species occurred frequently within range of the species. We determined that designation of critical habitat, including the publication of maps providing precise locations, would bring unnecessary attention to those areas of the range that are occupied by this species and would encourage acts of vandalism or intentional destruction of habitat. Moreover, the Service determined that the designation of critical habitat for the San Bernardino kangaroo rat was not prudent due to the lack of benefit to the species.

On March 4, 1999, the Southwest Center for Biological Diversity and Christians Caring for Creation filed a lawsuit in Northern District of California Federal Court against the Service and Secretary of the Department of the Interior for failure to designate critical habitat for the San Bernardino kangaroo rat and six other federally listed species. A settlement agreement was entered into on November 3, 1999, in which we would publish a proposal to withdraw the existing ''not prudent'' critical habitat determination and make a new prudency determination. If designation of critical habitat for the San Bernardino kangaroo rat was determined to be prudent, we would publish a proposed rule critical habitat designation by December 1, 2000.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we believe that designation of critical habitat would be prudent for the San Bernardino kangaroo rat.

Due to the small number of populations, the San Bernardino kangaroo rat is vulnerable to vandalism, or other disturbance. As we indicated in the final rule (63 FR 51005), we are concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, at this time, we do not have site-specific evidence throughout its range documenting the taking, vandalism, collection, or trade of the species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will substantially increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, some benefits may exist to the designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for occupied habitat by this species likely would not change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat likely would also result in jeopardy to the species, section 7 consultation may be triggered in a few instances where critical habitat has been designated. Examples could include currently unoccupied habitat that may become occupied in the future or areas that have not been thoroughly surveyed. Moreover, we acknowledged in the final rule (63 FR 51005) that critical habitat designation, in some situations, may provide limited value to a species by identifying areas important for the conservation of the species and calling attention to those areas in special need of protection. Designating critical

habitat may also convey some educational or informational benefits to the species. Therefore, we propose that critical habitat is prudent for the San Bernardino kangaroo rat.

Critical Habitat

Critical habitat is defined in section 3 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. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In regulations at 50 CFR 402.02, we define destruction or adverse modification as ''* * * the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not result in any regulatory requirements for these actions.

The designation of critical habitat does not, in itself, lead to the recovery of a listed species. The designation of critical habitat does not create a management plan, establish a preserve, reserve, or wilderness area where no actions are allowed, it does not establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat.

In accordance with section 3(5)(C) of the Act, not all areas that can be occupied by a species will be designated critical habitat. Not all areas containing one or more of the primary constituent elements are necessarily essential to the conservation of a threatened or endangered species. Areas that may contain one or more of the primary constituent elements to support the life cycle requirements of the San Bernardino kangaroo rat, but which are not included in proposed critical habitat, would be considered under other parts of the Act and/or other conservation laws and regulations.

In order to be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known, and using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 of the Act requires that we designate critical habitat at the time of listing and based on what we know at the time of the designation. When we designate critical habitat at the time of listing or under court-ordered deadlines, we often may not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

Within the geographic area occupied by the species, we are proposing for designation only areas currently known to be essential. Essential areas already contain the features and habitat characteristics that are necessary to sustain the species. Within the geographic area occupied by the species, we are not proposing to designate areas that do not now have the primary constituent elements that provide essential life-cycle requisites of the species, as defined at 50 CFR 424.12(b). Moreover, certain known populations of the San Bernardino kangaroo rat have not been proposed as critical habitat. We did not propose critical habitat for small scattered populations or habitats which were in areas that were highly fragmented by urban and agricultural development and/or were no longer subject to hydrological and geomorphological processes that would naturally maintain alluvial scrub vegetation. The areas proposed as critical habitat are an expansion of the known locations of the San Bernardino kangaroo rat identified in the final listing rule and are within the known geographical area for this species.

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.'' (50 CFR 424.12(e)). Based on the best available scientific and commercial data, there is no foundation upon which to make a determination that the conservation needs of the species require designation of critical habitat outside of occupied areas, so we have not proposed to designate critical habitat in areas outside the geographic area occupied by the species.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. This policy requires Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by states and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (*i.e.,* gray literature).

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that any designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, it is important to understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the

time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat units may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

In determining areas that are essential to conserve the San Bernardino kangaroo rat, we used the best scientific and commercial data available. These data included research and survey observations published in peer reviewed articles; regional Geographic Information System (GIS) coverages; San Bernardino County Multiple Species Habitat Conservation Program (MSHCP) database; the University of California, Riverside, species database; and data from reports submitted by biologists holding section 10(a)(1)(A) recovery permits.

Habitat loss and fragmentation resulted in blocks of habitat occupied by the San Bernardino kangaroo rat that functioned independently. Lands that support the remaining, including remnant, populations are essential to the conservation of the species. The protection of land supporting the three largest remaining populations of the San Bernardino kangaroo rat is not, by itself, sufficient to ensure the survival and recovery of the species because the status of these populations continues to be reduced by habitat loss, degradation, and fragmentation due to sand and gravel mining operations, flood control projects, water conservation activities, urban development, and vandalism. Furthermore, the majority of animals in these populations is constrained to the flood plains where they are susceptible to extirpation during large-scale flood events.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12 in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations and 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;
—Habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

The primary constituent elements for the San Bernardino kangaroo rat are those habitat components that are essential for the primary biological needs of foraging, reproducing, rearing of young, intra-specific communication, dispersal, genetic exchange, or sheltering. The primary constituent elements are found in areas influenced by historic and/or current geomorphological and hydrological processes and areas of wind-blown sand that support alluvial sage scrub vegetation or a mosaic of alluvial sage scrub and associated vegetation types (*e.g.,* coastal sage scrub, chaparral) within San Bernardino and Riverside counties. Primary constituent elements associated with the biological needs of dispersal are also found in areas that provide connectivity or linkage between or within larger core areas, including open space and disturbed areas containing introduced plant species.

Primary constituent elements include:

(1) Dynamic geomorphological and hydrological processes typical of fluvial systems within the historical range of the animal, *i.e.,* areas that are within active and historical flood regimes including river, creek, stream, and wash channels; alluvial fans; flood plains; flood-control berms and lands adjacent to them; flood plain benches and terraces; and historic braided channels;

(2) Historical and current alluvial processes within the historical range of the animal;

(3) Alluvial sage scrub and associated vegetation, such as coastal sage scrub and chamise chaparral. Common plant species include: Scalebroom (*Lepidospartum squamatum*), California buckwheat (*Eriogonum fasciculatum*), yerba santa (*Eriodictyon* spp., our Lord's candle (*Yucca whipplei*), sugar bush (*Rhus ovata*), lemonadeberry (*Rhus integrifolia*), laurel sumac (*Malosma laurina*), California juniper (*Juniperus californicus*), mulefat (*Baccharis salicifolia*), showy penstemon (*Penstemon spectabilis*), golden aster (*Heterotheca villosa*), tall buckwheat (*Eriogonum elongatum*), prickly pear and cholla (*Opuntia* spp.), chamise (*Adenostoma fasciculatum*), popcorn flower (*Plagiobothrys* spp.), and native and nonnative grasses.

(4) Sand, loam, or sandy loam soils within the historical range of the animal;

(5) Upland areas that may provide refugia from environmental or demographic stochastic and catastrophic events; and,

(6) Moderate to low degree of human disturbance to habitat within the species' historical range, *i.e.,* lands within or immediately adjacent to flood plain terraces that have suitable habitat for the species and areas within 50 m (150 ft) of currently suitable San Bernardino kangaroo rat habitat, such as agricultural lands that are not disked annually, out-of-production vineyards, margins of orchards, areas of active or inactive industrial or resource extraction activities, and urban/wildland interfaces.

Criteria Used To Identify Critical Habitat

In identifying areas essential to the conservation of the species, we used data regarding the habitat elements essential to the species, including vegetation types, hydrology, elevation, topography, and soil type and texture. We identified suitable and necessary habitat components within the species' current and historic range, and examined the degree of existing urbanization and other forms of anthropogenic habitat disturbance, excluding those areas in which development has permanently precluded occupation by the species.

To identify critical habitat units, we first evaluated those lands containing essential habitat to determine if these lands were covered by any HCPs or other special management plans that provided protection and management for the San Bernardino kangaroo rat. We determined that none of these lands are covered by an approved HCP or other special management plan covering the San Bernardino kangaroo rat. We then evaluated those areas where ongoing habitat conservation planning efforts have resulted in the preparation of biological analyses that identify habitat important for the conservation of the San Bernardino kangaroo rat. These include the proposed Western Riverside County MSHCP and the proposed San Bernardino Valley-Wide MSHCP. We used those biological analyses in concert with data regarding (1) known San Bernardino kangaroo rat occurrences, (2) alluvial fan sage scrub and associated vegetation, (3) geomorphology, and (4) connectivity

corridors between San Bernardino kangaroo rat populations to identify those lands that are essential for the conservation of the species within the respective planning area boundaries. Finally, we evaluated other lands for their conservation value for the San Bernardino kangaroo rat. Using similar methodology and data, we delimited a study area by selecting geographic boundaries based on the four factors described above. We determined conservation value based on the presence of, or proximity to, extant San Bernardino kangaroo rat populations and/or alluvial fan sage scrub and associated vegetation, surrounding land-uses, and the potential to allow dispersal of the species between occupied areas.

Proposed critical habitat for the San Bernardino kangaroo rat was delineated based on interpretation of the multiple sources available during the preparation of this proposed rule, including aerial photography at a scale of 1:24,000 (comparable to the scale of a 7.5 minute U.S. Geological Survey Quadrangle topographic map), current (2000) aerial photography prints, and projects authorized for take through section 7 consultations. These lands were divided into specific map units, *i.e.,* critical habitat units. For the purpose of this proposal, these units have been described using primarily UTM North American Datum of 1927 (NAD 27) derived from a 1–ha (2.47-ac) grid that approximated the boundaries delineated from the digital aerial photography.

In defining critical habitat boundaries, we made an effort to avoid development, such as urbanized areas (*e.g.,* cities) and similar lands that are not critical habitat. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for the San Bernardino kangaroo rat did not allow us to exclude all developed areas not likely to contain the primary constituent elements essential for conservation of the San Bernardino kangaroo rat. Existing features and structures within the boundaries of the mapped units, such as buildings, roads, railroads, airports, other paved areas, lawns, and other urban landscaped areas will not contain one or more of the primary constituent elements. Therefore, Federal actions limited to those areas would not trigger a section 7 consultation unless they affect the species and/or primary constituent elements in adjacent critical habitat. In summary, the critical habitat areas described below constitute our best assessment of areas needed for the long-term survival and conservation of the species.

We considered several qualitative criteria in the selection and proposal of specific areas, or units, for San Bernardino kangaroo rat critical habitat, including:

(1) Occupation by the San Bernardino kangaroo rat. We identified six areas that support populations of the San Bernardino kangaroo rat that we consider essential to the conservation of this species. Not all known populations of the San Bernardino kangaroo rat or suitable habitats have been proposed as critical habitat. The probability that all or most of the remaining occurrences of an endangered species will be lost to environmental or demographic stochasticity increases as the number of populations within the range of the species decreases. Only six relatively small and isolated populations remain; three (*i.e.,* Etiwanda, Reche Canyon, and Jurupa Hills) of which are so limited in abundance and distribution that extirpation is reasonably certain without immediate protection and conservation. Small, isolated populations have a high probability of extinction because they are susceptible to stochastic (*i.e.,* random, naturally occurring) events such as inbreeding, the loss of genetic variation, high variability in age and sex ratios, and catastrophes such as floods, droughts, or disease epidemics (Lande 1988, Saccheri *et al.* 1998), and isolation precludes immigration and/or re-colonization. These populations continue to be reduced by habitat loss, degradation, and fragmentation owing to sand and gravel mining operations, flood control projects, water conservation activities, urban development, and vandalism. Furthermore, the majority of animals in these populations occur in the flood plains that are highly susceptible to extirpation during large-scale flood events. As a result, areas proposed as critical habitat for the San Bernardino kangaroo rat must be protected and managed to increase the probability that environmental or demographic stochasticity will not result in the extinction of the species.

(2) The state of natural processes that rejuvenate and maintain suitable habitat. Normal periodic flooding scours the terrain, removes vegetation, and deposits debris and soil (*e.g.,* sand) to regenerate favorable conditions. Because the species appears to be adapted to more open habitat types (*e.g.,* higher population densities in open- versus closed-canopy shrub communities), the more open state promoted by periodic flooding is essential for the conservation of this animal.

(3) The presence of lands that function as upland refugia. The majority of the remaining populations of San Bernardino kangaroo rats are constrained to flood plains, where they are susceptible to extirpation during large-scale flood events. Occupied upland refugia areas may act as population sources for natural re-colonization, thereby decreasing the probability of extinction of the species.

(4) The proximity of the area to large tracts of undeveloped land that are important for population expansion, upland refugia, connectivity, providing buffers from development, perpetuation of ecosystem processes, and maintenance of a dynamic mosaic of vegetation. In addition, large tracts of land that allow for the existence of naturally functioning ecosystems with an array of native predators decrease the probability of predation by urban-associated animals such as domestic cats, which are known predators of the San Bernardino kangaroo rat.

Proposed Critical Habitat Designation

The approximate area encompassing proposed critical habitat by county and land ownership is shown in Table 1. Proposed critical habitat encompasses habitat throughout the species' remaining range in Riverside and San Bernardino counties, California. Lands proposed are under Tribal, private, State, and Federal ownership, with Federal lands including lands managed by the U.S. Forest Service, Bureau of Land Management, and Department of Defense. Six critical habitat units have been delineated. At the time of listing, we identified the Santa Ana River, Lytle and Cajon washes, and San Jacinto River as containing the largest extant concentrations of San Bernardino kangaroo rats and blocks of suitable habitat. These three areas continue to support important concentrations San Bernardino kangaroo rat and are the major strongholds of this species within its geographical range. A brief description of each unit, and reasons for proposing it as critical habitat, are presented below.

TABLE 1.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA (HA (AC)) BY COUNTY AND LAND OWNERSHIP—ESTIMATES REFLECT THE TOTAL AREA WITHIN CRITICAL HABITAT UNIT BOUNDARIES

County	Federal *	Local/state	Private	Tribal	Total
San Bernardino	1,501 ha (3,710 ac)	0 ha (0 ac)	16,690 ha (41,241 ac)	0 ha (0 ac)	18,191 ha. (44,951 ac).
Riverside	223 ha (550 ac)	0.8 ha (2 ac)	3,543 ha (8,756 ac)	465 ha (1,149 ac)	4,232 ha. (10,457 ac).
Total	1,724 ha (4,260 ac)	0.8 ha (2 ac)	20,233 ha (49,997 ac)	465 ha (1,149 ac)	22,423 ha. (55,408 ac).

* Federal lands include Bureau of Land Management, Department of Defense, and National Forest.

Critical Habitat Unit 1: Santa Ana River

The area proposed for critical habitat within the Santa Ana River watershed is 4,886 ha (12,074 ac). At the time of the final rule, we identified approximately 2,813 ha (6,949 ac) of suitable and occupied San Bernardino kangaroo rat habitat within the Santa Ana River flood plain. Braden and McKernan (2000) provided new information about the range and habitat affinities, including alluvial soils and vegetative cover, of the San Bernardino kangaroo rat, which indicate that the habitat used within the flood plain is larger than previously thought. Therefore, we have identified new areas of occupation and lands that are essential for maintaining habitat connectivity that were not described in the final rule. Unit 1 includes a section of Mill Creek (not discussed in the final rule) because of its contribution to the fluvial dynamics of the Santa Ana River flood plain, which is particularly important since the construction of the Seven Oaks Dam. In the final rule, only 8 ha (20 ac) along City Creek were identified as occupied. In the proposed critical habitat, Unit 1 encompasses occupied habitat along City Creek.

Unit 1, located in San Bernardino County, includes the Santa Ana River and portions of City, Plunge, Mill, and San Timoteo creeks. Bounded by Seven Oaks Dam to the northeast, the area includes San Bernardino National Forest lands and portions of the cities of San Bernardino, Redlands, Highland, and Colton. Although Seven Oaks Dam impedes sediment transport and reduces the magnitude, frequency, and extent of flood events, the system still retains partial fluvial dynamics because contributions from Mill Creek are not impeded by a dam or debris basin.

A large tract of undeveloped land in San Bernardino National Forest is partially within and adjacent to the northern and eastern portions of this critical habitat unit. In addition, Unit 1 contains upland refugia and tributaries (*i.e.,* City, Plunge, and San Timoteo creeks) that are occupied by the species, active hydrological channels, flood plain terraces, and areas of habitat immediately adjacent to flood plain terraces.

Unit 1 contains the Woolly-Star Preservation Area (WSPA), a section of the flood plain downstream of Seven Oaks Dam that was preserved by the flood control districts of Orange, Riverside, and San Bernardino counties. The WSPA was established in 1988 by the U.S. Army Corps of Engineers (Corps) in an attempt to minimize the effects of Seven Oaks Dam on the federally endangered Santa Ana River woolly-star (*Eriastrum densifolium* ssp. *sanctorum*) along the Santa Ana River. Approximately 309 hectares (764 acres) of alluvial fan scrub in the wash near the low-flow channel of the river were designated for preservation as mitigation because these sections of the wash were thought to have the highest potential to maintain the hydrology necessary for the periodic regeneration of early phases of alluvial fan sage scrub. Approximately 80 ha (200 ac) of the WSPA appear to be habitat for the San Bernardino kangaroo rat (Service unpub. GIS maps, 1997).

We are now coordinating with the Bureau of Land Management, Corps, San Bernardino Valley Conservation District, Sun West Materials, Robertson's Ready Mix, and other local interests in an attempt to establish the Santa Ana River Wash Conservation Area. The objective of these discussions is to consolidate a large block of alluvial fan scrub occupied by three federally endangered species, the San Bernardino kangaroo rat, Santa Ana River woolly-star, and slender-horned spineflower (*Dodecahema leptoceras*); and one federally threatened species, the coastal California gnatcatcher (*Polioptila californica californica*). The area is envisioned to include an Area of Critical Environmental Concern or ACEC (see below) and the Corps' mitigation lands for the Santa Ana River woolly-star (*i.e.,* WSPA). This cooperative agreement would reconfigure and consolidate sand and gravel mining operations in this unit to reduce adverse effects to these listed species and remaining alluvial fan scrub communities.

In 1994, the Bureau of Land Management designated three parcels in the Santa Ana River, a total of 304 ha (760 ac), as an ACEC. The primary goal in designation was to protect and enhance the habitat of federally listed plant species occurring in the area while providing for the administration of existing valid rights. Although the establishment of this ACEC was important in regard to conservation of sensitive species and communities in this area, the administration of valid existing rights conflicts with the Bureau of Land Management's conservation abilities. Existing rights include a withdrawal of Federal lands for water conservation through an act of Congress on February 20, 1909 (Public, No. 248). The entire ACEC is included in this withdrawn land and may be used for water conservation measures such as the construction of percolation basins. These lands are not managed specifically for the San Bernardino kangaroo rat.

Critical Habitat Unit 2: Lytle and Cajon Creeks

Unit 2, which encompasses approximately 3,845 ha (20,621 ac) in San Bernardino County and includes the northern extent of this species' remaining distribution, contains habitat along and between Lytle and Cajon Creeks from the point that the creeks emanate from canyons within San Bernardino National Forest to flood control channels downstream. Unit 2 includes alluvial fans, flood plain terraces, and historic braided river channels. Alluvial sage scrub and other vegetation types that provide habitat for San Bernardino kangaroo rat occur on terraces and adjacent areas with sandy soils. Unit 2 includes Glen Helen Regional Park and portions of Muscoy.

McKernan (*in litt.* 1999) provided new information about the historic distribution, range, habitat affinities, and evidence of historic and current occupation by the San Bernardino

kangaroo rat in the western portion of this unit. At the time of listing, the Lytle-Cajon area was thought to contain approximately 3,280 ha (8,107 ac) of occupied habitat. Since the time of listing, a large historical fluvial breakout zone extending southwest from Lytle Creek and including the Etiwanda Fan (see Unit 4) has been recognized and data have been collected indicating that the species occupies a wider range of alluvial soils and vegetative cover than previously known (McKernan *in litt.* 1999). These areas are essential because of the presence of major populations of the species and habitat connectivity.

The hydro-geomorphological processes that apparently rejuvenate and maintain the dynamic mosaic of alluvial fan sage scrub are still largely intact in Lytle and Cajon Creeks (*i.e.,* stream flows are not impeded by dams or debris basins), and the remaining habitat allows dispersal between these two drainages, which is important for genetic exchange. Unit 2 is adjacent to large tracts of undeveloped land and contains upland areas occupied by the species.

The CalMat conservation bank was established in 1996 and 1997 to help conserve populations of 24 species associated with alluvial fan scrub, including the Santa Ana River woolly-star, San Bernardino kangaroo rat, and coastal California gnatcatcher in the Cajon Creek area. This conservation bank comprises approximately 244 ha (610 ac). We are working to ensure that lands within this conservation bank are purchased by the year 2006, when interim protection under a 10-year conservation easement ends. Such a purchase would contribute to the protection of more than 560 ha (1400 ac) in this area when combined with the CalMat preservation area and mitigation lands for the development of the County of San Bernardino Sheriff's training facility. These lands could form the nucleus for a larger reserve to protect the San Bernardino kangaroo rat and other listed species in this area.

Critical Habitat Unit 3: San Jacinto River-Bautista Creek

Unit 3 encompasses approximately 4,089 ha (10,104 ac) in Riverside County and includes portions of San Bernardino National Forest, Soboba Reservation, Bautista Creek, and areas along the San Jacinto River in the vicinity of San Jacinto, Hemet, and Valle Vista. This unit, which represents the southern extent of the known distribution of the species, is adjacent to San Bernardino National Forest and contains occupied upland refugia.

The species is primarily restricted to a channelized flood plain, but occupies areas outside flood control berms and westward along the river into the San Jacinto Valley and foothills of the Badlands. All lands within Riverside County proposed for designation as San Bernardino kangaroo rat critical habitat are within the planning area of the Western Riverside MSHCP.

At the time of listing, we identified approximately 547 ha (1,352 ac) of suitable and occupied San Bernardino kangaroo rat habitat within the Santa Jacinto River flood plain. Additional areas along the San Jacinto River have been identified as essential for the conservation of the San Bernardino kangaroo rat based on additional information on occupied areas, better understanding of the habitat needs and vegetation types, need for habitat connectivity, and maintenance of hydrological conditions. New information indicates that the habitat occupied within the flood plain by the San Bernardino kangaroo rat is larger than previously thought (McKernan, *in litt.* 1999, Braden and McKernan 2000), and includes areas of higher vegetation density. We have also received additional information on the distribution of the subspecies within the watershed (*e.g.,* Bautista Creek), and are including areas essential for maintaining habitat connectivity along the flood plain. This additional information further supports the identification of this area as a major concentration of San Bernardino kangaroo rat in the final listing rule and the importance of this area for the long-term conservation for this species.

Critical Habitat Unit 4: Etiwanda Alluvial Fan and Wash

Unit 4, which encompasses approximately 3,845 ha (9,502 ac), is located in western San Bernardino County and represents the approximate westernmost extent of the known range of the San Bernardino kangaroo rat. Within the northern boundary of the unit are portions of San Bernardino National Forest. Unit 4 includes lands within and between the active hydrological channels of Deer, Day, Etiwanda, and San Sevaine creeks. A large alluvial fan, flood plains, and terraces occur throughout the unit. Soils are primarily sandy or sandy loam and support alluvial fan sage scrub. Unit 4 includes portions of the cities of Rancho Cucamonga, Fontana, Rialto, and Ontario; and the 314-ha (760-ac) North Etiwanda Preserve.

McKernan (*in litt.* 1999) provided new information about the historic distribution, range, habitat affinities, and evidence of historic and current occupation by the San Bernardino kangaroo rat along the western half of the Lytle Creek Fan, including the Etiwanda Fan and Wash. The Etiwanda area was thought to contain approximately 2 ha (5 ac) of occupied habitat for the species at the time of listing. Since then, a large historical fluvial breakout zone in southwestern San Bernardino County, extending southwest from Lytle Creek and including the Etiwanda Fan, has been recognized, research has verified occupation, museum specimens that were collected in the area have been conclusively identified as the San Bernardino kangaroo rat, and data have been collected indicating that the species occupies a wider range of alluvial soils and vegetative cover (McKernan *in litt.* 1999).

Proposed lands contain a remnant population of the species and upland refugia from catastrophic flooding. Neither dams nor debris basins exist at the mouths of East Etiwanda and San Sevaine creeks, enabling natural fluvial processes to maintain favorable habitat conditions on the upper alluvial fan and in other portions of the critical habitat unit. McKernan (*in litt.* 1999) states that areas within historic flood regimes (such as western Lytle Creek fan including the Etiwanda wash) should be given equal priority as the major population areas of the Santa Ana River and Cajon Wash. Additional areas along the Etiwanda Alluvial Fan and Wash have been identified as essential for the conservation of the San Bernardino kangaroo rat based on additional information on occupied areas, better understanding of the habitat needs and vegetation types, need for habitat connectivity, and maintenance of hydrological conditions.

Critical Habitat Unit 5: Reche Canyon

Unit 5 encompasses approximately 129 ha (319 ac) in and around Reche Canyon in San Bernardino County and is directly south of and nearly adjacent to Unit 1. Reche Canyon, the type locality for the San Bernardino kangaroo rat (the geographic location from which a type specimen was collected), still contains occupied habitat for the species, including active waterways, flood plain terraces, and sage scrub. In the final rule, we estimated that 2 ha (5 ac) of habitat were occupied by the San Bernardino kangaroo rat in this area. The proposed critical habitat includes an additional 127 ha (314 ac) of habitat, encompassing known occupied areas and additional areas within Reche Canyon based on a better understanding of the habitat needs and vegetation

types and maintenance of hydrological conditions needed to sustain alluvial scrub vegetation.

Unit 5 supports a remnant population of the San Bernardino kangaroo rat, and contains lands that function as refugia for the species. Potential exists for species expansion into the Badlands, which could reconnect this population with that of Unit 3 (San Jacinto).

Critical Habitat Unit 6: Jurupa Hills-South Bloomington

Unit 6 encompasses approximately 1,128 ha (2788 ac), and includes the Jurupa Hills and area eastward to and including the south portion of the city of Bloomington. The majority of Unit 6 is located in San Bernardino County (985 ha (2,435 ac)), with a small portion (143 ha (353 ac)) occurring in northern Riverside County.

In the final rule, we estimated that less than 1 ha (2 ac) of habitat in this area was occupied by the San Bernardino kangaroo. Unit 6 includes an additional 1,127 ha (2,786 ac) of habitat and encompasses areas essential for connectivity, which are necessary for dispersal.

Unit 6 is unique among the critical habitat units for this species, containing the last known example of remaining occupied habitat where sandy soils appear to be at least partially deposited by winds. In addition, the unit is completely outside of a flood plain, making it the only critical habitat unit for this species not at risk of catastrophic flooding.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, 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 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.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation 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 the Director believes would avoid resulting in the 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 are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where 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 or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed 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 biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

Activities on Federal lands that may affect the San Bernardino kangaroo rat or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, or some other Federal action, including funding (*e.g.,* Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the San Bernardino kangaroo rat is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may destroy or adversely modify critical habitat include, but are not limited to:

(1) Any activity that results in changes in the hydrology of the unit, including activities associated with flood control structures and operations; construction of levees, berms, and concrete channels; flooding; sediment, sand, or gravel removal, transfer, or deposition; grading; excavation; and construction or modification of bridges;

(2) Any activity that results in development or alteration of the landscape within or immediately adjacent to fluvial systems, including water diversion, reclamation, and recharge activities; agricultural

activities; urban and industrial development; water conservation activities; off-road activity; and mechanized land clearing or disking;

(3) Any activity that results in changes to the water quality or quantity to an extent that habitat becomes unsuitable to support the San Bernardino kangaroo rat;

(4) Any activity that could lead to the introduction, expansion, or increased density of exotic plant or animal species, urban-associated domestic animals (*e.g.*, cats), or livestock into San Bernardino kangaroo rat habitat;

(5) Any activity that results in appreciable detrimental changes to the density or diversity of plant or animal populations in San Bernardino kangaroo rat habitat, such as grubbing, grading, overgrazing, mining, disking, off-road vehicle use, or the application of herbicides, rodenticides, or other pesticides; and,

(6) Any activity that could result in an appreciably decreased habitat value or quality through indirect effects, such as noise, edge effects, night-time lighting, or fragmentation.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. In those cases, critical habitat provides little additional protection to a species, and the ramifications of its designation are few or none. Designation of critical habitat in areas occupied by the San Bernardino kangaroo rat is not likely to result in a regulatory burden above that already in place due to the presence of the listed species. In addition, the Corps requires review of most or all projects requiring permits in all fluvial systems, whether San Bernardino kangaroo rats are known to be present. If occupied habitat becomes unoccupied in the future, critical habitat may provide a limited benefit in such cases.

Designation of critical habitat could affect Federal agency activities. Federal agencies already consult with the Service on activities in areas known to be occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act;

(2) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities;

(3) Regulation of airport construction and/or improvement activities by the Federal Aviation Administration;

(4) Military activities on applicable DOD lands;

(5) Licensing of construction of communication sites by the Federal Communications Commission;

(6) Funding of activities by the U.S. Environmental Protection Agency, Department of Energy, or any other Federal agency.

If you have questions regarding whether specific activities will likely constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the Division of Endangered Species, U. S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (telephone 503–231–6158; facsimile 503–231–6243).

Relationship to Habitat Conservation Plans and Other Planning Efforts

Section 10(a)(1)(B) of the ESA authorizes the Service to issue to non-Federal entities a permit for the incidental take of endangered and threatened species. This permit allows a non-Federal landowner to proceed with an activity that is legal in all other respects, but that results in the incidental taking of a listed species. The ESA defines incidental take as take that is ''incidental to, and the purpose of, the carrying out of an otherwise lawful activity.'' A habitat conservation plan, or HCP, must accompany an application for an incidental take permit. The purpose of the HCP is to describe and ensure that the effects of the permitted action on covered species are adequately minimized and mitigated and that the action does not appreciably reduce the survival and recovery of the species.

The State of California instituted a conservation planning program parallel to the Federal HCP program. Under the Natural Community Conservation Planning Act of 1991, a NCCP is a plan for the conservation of natural communities that takes an ecosystem approach and encourages cooperation between private and government interests. The Service and the California Department of Fish and Game work with applicants to develop plans that serve both as an HCP under the Federal Endangered Species Act as well as an NCCP under the State's NCCP Act. Much like a regional HCP, an NCCP identifies and provides for the regional or area-wide protection and perpetuation of plants, animals, and their habitats, while allowing compatible land use and economic activity. The initial focus of this program is coastal sage scrub. Within this program, the California Department of Fish and Game included the long-term conservation of alluvial scrub, which is in part occupied by the San Bernardino kangaroo rat. However, participation in NCCP is voluntary. San Bernardino and Riverside counties have signed planning agreements (memoranda of understanding (MOUs)) to develop multi-species plans that meet NCCP criteria, but have not enrolled in the NCCP program in the interim.

We are coordinating with the Bureau of Land Management, Corps, San Bernardino Valley Conservation District, Sun West Materials, Robertson's Ready Mix, and other local interests in an attempt to establish the Santa Ana River Wash Conservation Area. The objective of these discussions is to consolidate a large block of alluvial fan scrub communities occupied by four federally listed species, but as yet, we have not completed this process.

Since there are no approved HCPs/NCCPs with coverage for the San Bernardino kangaroo rat or other conservation plans that are currently completed, we did not propose to exclude any lands from this critical habitat designation on this basis.

In the event that future HCPs covering the San Bernardino kangaroo rat are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of the San Bernardino kangaroo rat by either directing development and habitat modification

to nonessential areas or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the San Bernardino kangaroo rat. The process also enables us to conduct detailed evaluations of the importance of such lands to the long term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks.

We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the long-term conservation of the San Bernardino kangaroo rat and appropriate management for those lands. The take minimization and mitigation measures provided under these HCPs are expected to protect the essential habitat lands designated as critical habitat in this rule. If an HCP that addresses the San Bernardino kangaroo rat as a covered species is ultimately approved, the Service will reassess the critical habitat boundaries in light of the HCP. The Service will seek to undertake this review when the HCP is approved, but funding constraints may influence the timing of such a review.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a comment period at that time.

Public Comments Solicited

We intend for any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we solicit 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 designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of the San Bernardino kangaroo rat habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and,

(5) Economic and other values associated with designating critical habitat for the San Bernardino kangaroo rat, such as those derived from non-consumptive uses (*e.g.,* hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, ''existence values,'' and reductions in administrative costs).

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods.

1. You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

2. You may hand-deliver written comments to our Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California.

3. If you would like to submit comments by e-mail, please submit e-mail comments as an ASCII file format and avoid the use of special characters and encryption. You may send comments by electronic mail (e-mail) to FW1CFWO__commat;fws.gov. Please include ''Attn: RIN 1018–AE59'' and your name and return address in your e-mail message. Please note that the e-mail address will be closed out at the termination of the public comment period. If you do not receive a confirmation from the system that we have received your e-mail message, contact us by calling our Carlsbad Fish and Wildlife Office at phone number 760–431–9440.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish 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. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published in the **Federal Register** 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 these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment during the public comment period on the specific assumptions and conclusions regarding the proposed designation of critical habitat. We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make proposed rules 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 proposed rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

Required Determinations

Regulatory Planning and Review

This document is a significant rule and has been reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866.

(a) This rule, as proposed, will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The San Bernardino kangaroo rat was listed as an endangered species in 1998. Since that time, we have conducted ten formal section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the species.

The areas proposed as critical habitat are within the geographic range occupied by the San Bernardino kangaroo rat. Under the Act, critical habitat may not be adversely modified by a Federal agency action; it 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 adverse modification of designated critical habitat would currently be considered as ''jeopardy'' under the Act. Accordingly, the designation of areas within the geographic range occupied by the San Bernardino kangaroo rat has little, if 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 although they continue to be bound by the provisions of the Act concerning ''take'' of the species.

(b) This rule, as proposed, will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the San Bernardino kangaroo rat since the listing in 1998. The prohibition against adverse modification of critical habitat is not expected to impose any restrictions in addition to those that now exist because all designated critical habitat is within the geographic range occupied by the San Bernardino kangaroo rat. Because of the potential for impacts on other Federal agency activities, we will continue to review this action for any inconsistencies with other Federal agency actions.

(c) This rule, as proposed, will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are 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. We will review the effects of this proposed action on Federal agencies or non-Federal persons that receive Federal authorization or funding in the area of critical habitat.

(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 SAN BERNARDINO KANGAROO RAT LISTING AND CRITICAL HABITAT DESIGNATION

Categories of Activities	Activities Potentially Affected by Species Listing Only [1]	Additional Activities Potentially Affected by Critical Habitat Designation [2]
Federal Activities Potentially Affected.[3].	Activities the Federal Government carries out such as removing, degrading, or destroying San Bernardo kangaroo rat habitat (as defined in primary constituent elements discussion), whether by burning or mechanical, chemical, or other means (e.g., grubbing, grading flooding, discing, flood control, off-road vehicle use, overgrazing, construction, road building, mining, herbicide and pesticide application, etc.) and appreciably decreasing habitat value or quality through indirect effects (e.g., noise, edge effects, night-time lighting, invasion of exotic plants or animals, or fragmentation).	May result in a limited increase in the number of section 7 consultations.
Private Activities Potentially Affected.[4].	Activities such as removing, degrading, or destroying San Bernardino kangaroo rat habitat (as defined in the primary constituent elements discussion), whether by burning or mechanical, chemical, or other means e.g., grubbing, grading, flooding, discing, flood control, off-road vehicle use, overgrazing, construction, road building, mining, herbicide and pesticide application, etc.) an appreciably decreasing habitat value or quality through indirect effects (e.g., noise, edge effects, night-time lighting, invasion of exotic plants or animals, or fragmentation that require a Federal action (permit, authorization, or funding).	May result in a limited increase in the number of section 7 consultations.

[1] This column represents the activities potentially affected by listing the San Bernardino kangaroo rat as an endangered species (Jan. 27, 1998; 63 FR 3835) under the Endangered Species Act.

[2] This column represents the activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.

[3] Activities initiated by a Federal agency.

[4] Activities initiated by a private entity that may need Federal authorization or funding.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis (under section 4 of the Act), we will determine whether 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, as proposed, is not expected to result in any restrictions in addition to those currently in existence for areas of occupied habitat. As indicated on Table 1 (see Proposed Critical Habitat Designation section), we designated property owned by Federal, State, and local governments, and private property. Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Regulation of grazing, mining, and recreation by the Bureau of Land Management or U.S. Forest Service;

(4) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities;

(5) Regulation of airport construction or improvement activities by the Federal Aviation Administration;

(6) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(7) Construction of communication sites licensed by the Federal Communications Commission; and

(8) Activities funded by the U.S. Environmental Protection Agency, U.S. Department of Energy, or any other Federal agency.

Many of these activities sponsored by Federal agencies within the proposed critical habitat units are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities in areas of habitat occupied by the species. For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the 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 in the economic analysis, 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 have little, if any, additional effects on these activities in areas of critical habitat occupied by the species. We expect little additional effect for the area of proposed critical habitat.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule, as proposed, 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 having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the 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.

(b) This rule, will not produce a Federal mandate of $100 million or greater in any year, that is, 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, the rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, 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 San Bernardino kangaroo rat. Due to current public knowledge of the species protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions in areas of occupied critical habitat, we do not anticipate that property values will be affected by the critical habitat designation. 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 San Bernardino kangaroo rat.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. We will coordinate any future designation of critical habitat for the San Bernardino kangaroo rat with the appropriate State agencies. The designation of critical habitat in areas currently occupied by the San Bernardino kangaroo rat imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We propose critical habitat in accordance with the provisions of the Act, and plan public hearings on the proposed designation during the comment period if requested. The rule uses standard property descriptions and identifies the primary constituent elements within the proposed units to assist the public in understanding the habitat needs of the San Bernardino kangaroo rat.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule references permits for HCPs which contain information collection activity. The Fish and Wildlife Service has OMB approval for the collection under OMB Control Number 1018–0094. The Service 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.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

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 understand that federally recognized Tribes must be related to on a Government-to-Government basis. We determined that there are approximately 465 ha (1,149 ac) of Tribal lands essential for the conservation of the San Bernardino kangaroo rat along the western boundary of the Soboba Indian Reservation in Riverside County. Therefore, we are proposing to designate critical habitat for the San Bernardino kangaroo rat on only this portion of Tribal lands.

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.

References Cited

You may request a complete list of all references cited in this proposed rule from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Nancy Kehoe, Carlsbad Fish and Wildlife Office (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. In § 17.11(h) revise the entry for ''Kangaroo rat, San Bernardino''' under ''MAMMALS'' 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						
MAMMALS							
*	*	*	*	*	*		*
Kangaroo rat, San Bernardino Merriam's.	*Dipodomys merriami parvus.*	U.S.A. (CA)	Entire	E	632E, 645	17.95(a)	NA
*	*	*	*	*	*		*

3. Amend § 17.95(a) by adding critical habitat for the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) in the same alphabetical order as this species occurs in § 17.11 (h).

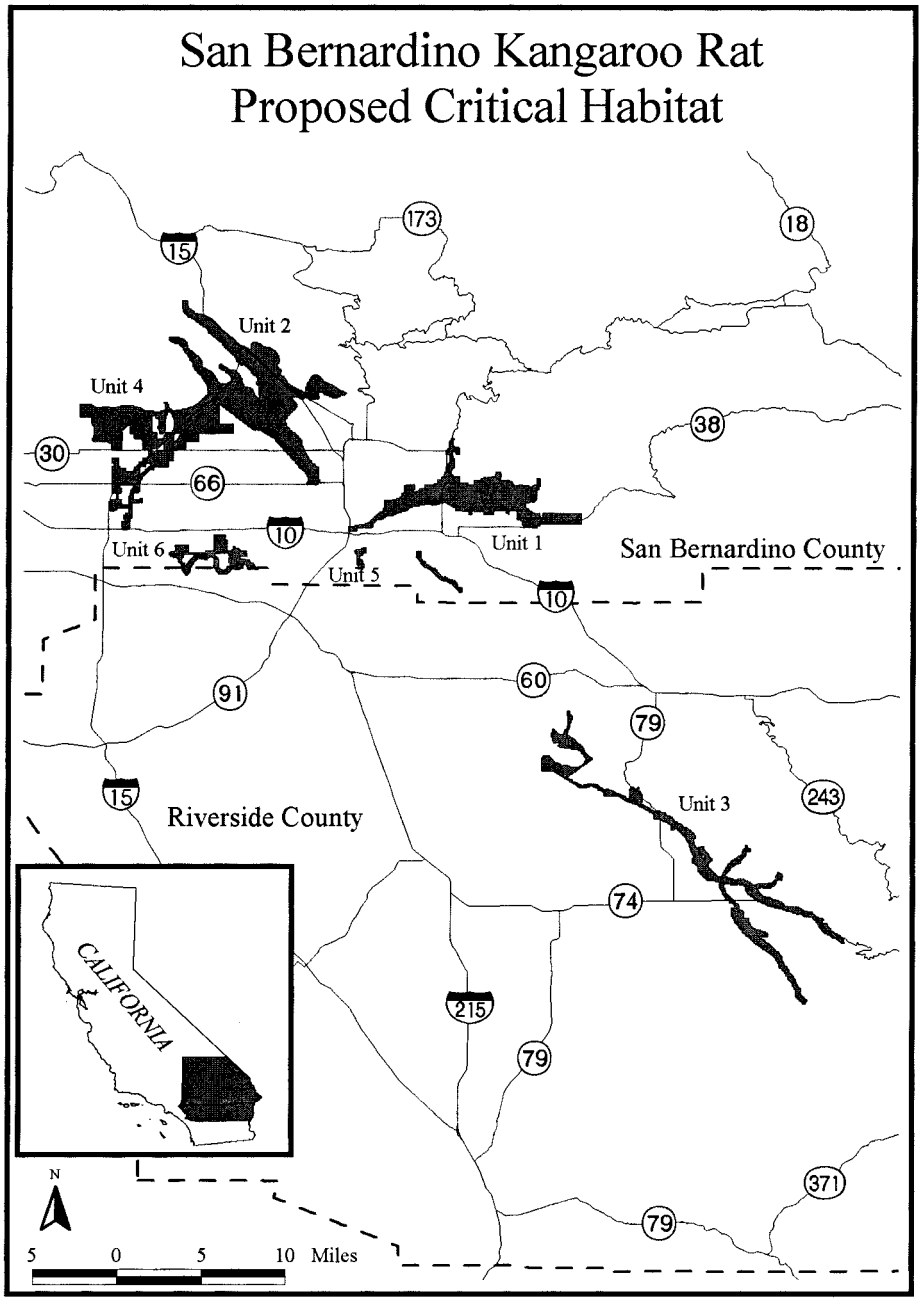
§ 17.95 Critical habitat—fish and wildlife.

(a) Mammals.

* * * * *

San Bernardino Kangaroo Rat (*Dipodomys merriami parvus*).

1. Critical Habitat Units are depicted for San Bernardino and Riverside counties, California, on the maps below.



2. Within these areas, the primary constituent elements for the San Bernardino kangaroo rat are those habitat components that are essential for the primary biological needs of foraging, reproducing, rearing of young, intra-specific communication, dispersal, genetic exchange, or sheltering. The primary constituent elements are found in areas influenced by historic and/or current geomorphological and hydrological processes and areas of wind-blown sand that support alluvial sage scrub vegetation or a mosaic of alluvial sage scrub and associated vegetation types (*e.g.,* coastal sage scrub, chaparral) within San Bernardino and Riverside counties. Primary constituent elements associated with the biological needs of dispersal are also found in areas that provide connectivity or linkage between or within larger core areas, including open space and disturbed areas containing introduced plant species.

Primary constituent elements include:

(1) Dynamic geomorphological and hydrological processes typical of fluvial systems within the historical range of the animal, *i.e.,* areas that are within active and historical flood regimes including river, creek, stream, and wash channels; alluvial fans; flood plains; flood-control berms and lands adjacent to them; flood plain benches and terraces; and historic braided channels;

(2) Historical and current alluvial processes within the historical range of the animal;

(3) Alluvial sage scrub and associated vegetation, such as coastal sage scrub and chamise chaparral. Common plant species include: Scalebroom (*Lepidospartum squamatum*), California buckwheat (*Eriogonum fasciculatum*), yerba santa (*Eriodictyon* spp.), our Lord's candle (*Yucca whipplei*), sugar bush (*Rhus ovata*), lemonadeberry (*Rhus integrifolia*), laurel sumac (*Malosma laurina*), California juniper (*Juniperus*

californicus), mulefat (*Baccharis salicifolia*), showy penstemon (*Penstemon spectabilis*), golden aster (*Heterotheca villosa*), tall buckwheat (*Eriogonum elongatum*), prickly pear and cholla (*Opuntia* spp.), chamise (*Adenostoma fasciculatum*), popcorn flower (*Plagiobothrys* spp.), and native and nonnative grasses.

(4) Sand, loam, or sandy loam soils within the historical range of the animal;

(5) Upland areas that may provide refugia from environmental or demographic stochastic and catastrophic events; and

(6) Moderate to low degree of human disturbance to habitat within the species' historical range, *i.e.,* lands within or immediately adjacent to flood plain terraces that have suitable habitat for the species and areas within 50 m (150 ft) of currently suitable San Bernardino kangaroo rat habitat, such as agricultural lands that are not disked annually, out-of-production vineyards, margins of orchards, areas of active or inactive industrial or resource extraction activities, and urban/wildland interfaces.

3. Existing features and structures within the boundaries of the mapped units, such as buildings, roads, railroads, airports, other paved areas, lawns, other urban landscaped areas, and other features not containing primary constituent elements are not considered critical habitat.

Map Unit 1: Santa Ana River and San Timoteo Canyon, San Bernardino County, California. From USGS 1:24,000 quadrangle maps Harrison Mountain (1980), Yucaipa (1988), Redlands (1980), and San Bernardino South (1980), California, lands in the Santa Ana Wash bounded by the following Universal Transverse Mercator (UTM) North American Datum 1927 (NAD27) coordinates (X, Y): 482500, 3778300; 482700, 3778300; 482700, 3778200; 482800, 3778200; 482800, 3778100; 482700, 3778100; 482700, 3777500; 482800, 3777500; 482800, 3777400; 483200, 3777400; 483200, 3777300; 483300, 3777300; 483300, 3776700; 483000, 3776700; 483000, 3776800; 482900, 3776800; 482900, 3776900; 482800, 3776900; 482800, 3777000; 482600, 3777000; 482600, 3776600; 482700, 3776600; 482700, 3776300; 482800, 3776300; 482800, 3775400; 482600, 3775400; 482600, 3775200; 482500, 3775200; 482500, 3774800; 482700, 3774800; 482700, 3774600; 483300, 3774600; 483300, 3774000; 484100, 3774000; 484100, 3773800; 484700, 3773800; 484700, 3774200; 485400, 3774200; 485400, 3774400; 485600, 3774400; 485600, 3774500; 485800, 3774500; 485800, 3774400; 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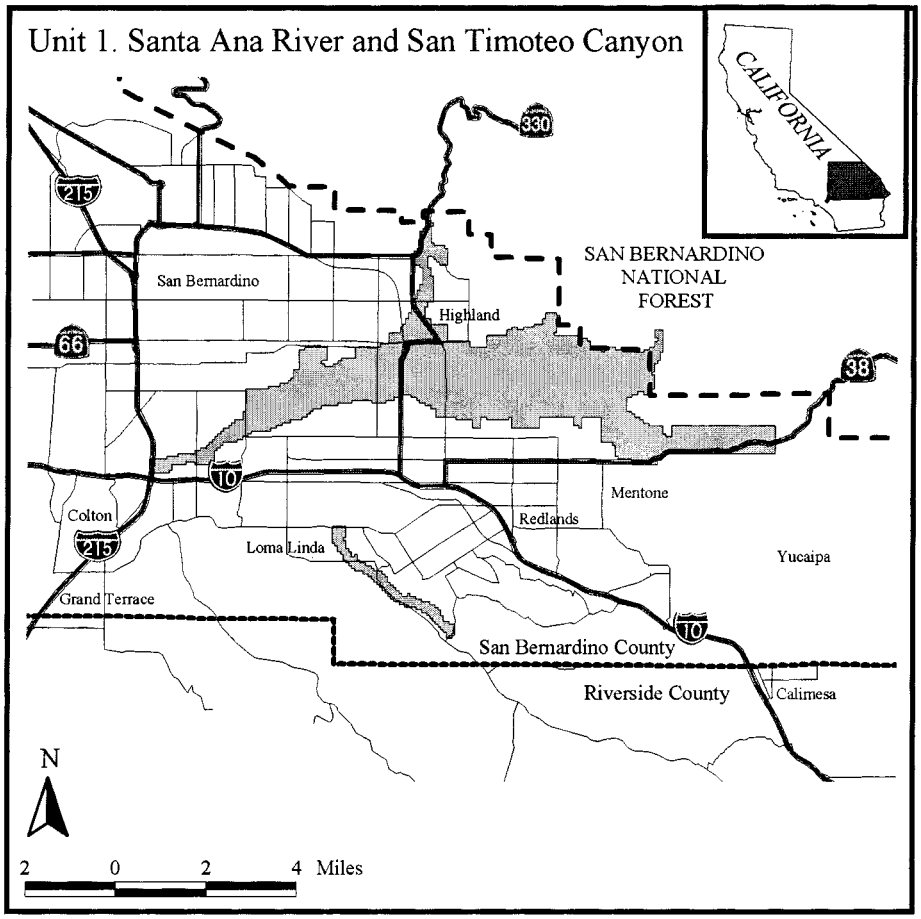

Map Unit 2: Lytle and Cajon Creeks, San Bernardino County, California. From USGS 1:24,000 quadrangle maps San Bernardino South (1980), San Bernardino North (1988), Devore (1988), and Cajon (1988), lands bounded by the following UTM NAD27 coordinates (X, Y): 456700, 3791400; 457200, 3791400; 457200, 3790900; 457300, 3790900; 457300, 3790700; 457400, 3790700; 457400, 3790600; 457600, 3790600; 457600, 3790500; 457700, 3790500; 457700, 3790400; 457800, 3790400; 457800, 3790300; 457900, 3790300; 457900, 3790200; 458200, 3790200; 458200, 3790100; 458600, 3790100; 458600, 3790000; 458800, 3790000; 458800, 3789900; 459000, 3789900; 459000, 3789800; 459200, 3789800; 459200, 3789700; 459300, 3789700; 459300, 3789600; 459500, 3789600; 459500, 3789500; 459600, 3789500; 459600, 3789400; 459800, 3789400; 459800, 3789300; 459900, 3789300; 459900, 3789200; 460000, 3789200; 460000, 3789000; 460100, 3789000; 460100, 3788900; 460200, 3788900; 460200, 3788800; 460300, 3788800; 460300, 3788700; 460400, 3788700; 460400, 3788600; 460600, 3788600; 460600, 3788500; 460700, 3788500; 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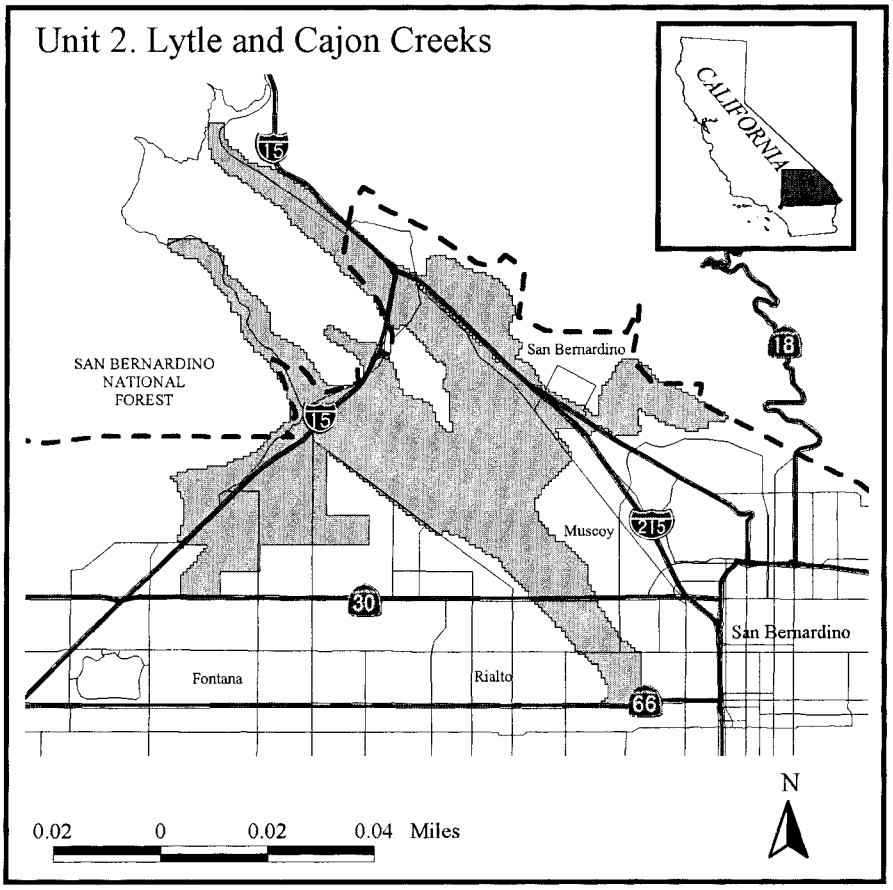
Unit 2. Lytle and Cajon Creeks
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NATIONAL
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San Bernardino
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Map Unit 3: San Jacinto River and Bautista Creek, Riverside County, California. From USGS quadrangle maps Blackburn Canyon (1988), Hemet (1979), Lake Fulmor (1988), San Jacinto (1979), Lakeview (1979), and El Casco (1979), California, land bounded by the following UTM NAD27 coordinates (X, Y): 506300, 3739000; 506300, 3739200; 506800, 3739200; 506800, 3738900; 506900, 3738900; 506900, 3738700; 507000, 3738700; 507000, 3738600; 507100, 3738600; 507100, 3738500; 507200, 3738500; 507200, 3738400; 507300, 3738400; 507300, 3738200; 507400, 3738200; 507400, 3738100; 507500, 3738100; 507500, 3738000; 507600, 3738000; 507600, 3737800; 507500, 3737800; 507500, 3737700; 507300, 3737700; 507300, 3737600; 507200, 3737600; 507200, 3737400; 507100, 3737400; 507100, 3737300; 507200, 3737300; 507200, 3737200; 507300, 3737200; 507300, 3737100; 507400, 3737100; 507400, 3737000; 507500, 3737000; 507500, 3736900; 507600, 3736900; 507600, 3736800; 507700, 3736800; 507700, 3736700; 507800, 3736700; 507800, 3736600; 507900, 3736600; 507900, 3736500; 508000, 3736500; 508000, 3736400; 508100, 3736400; 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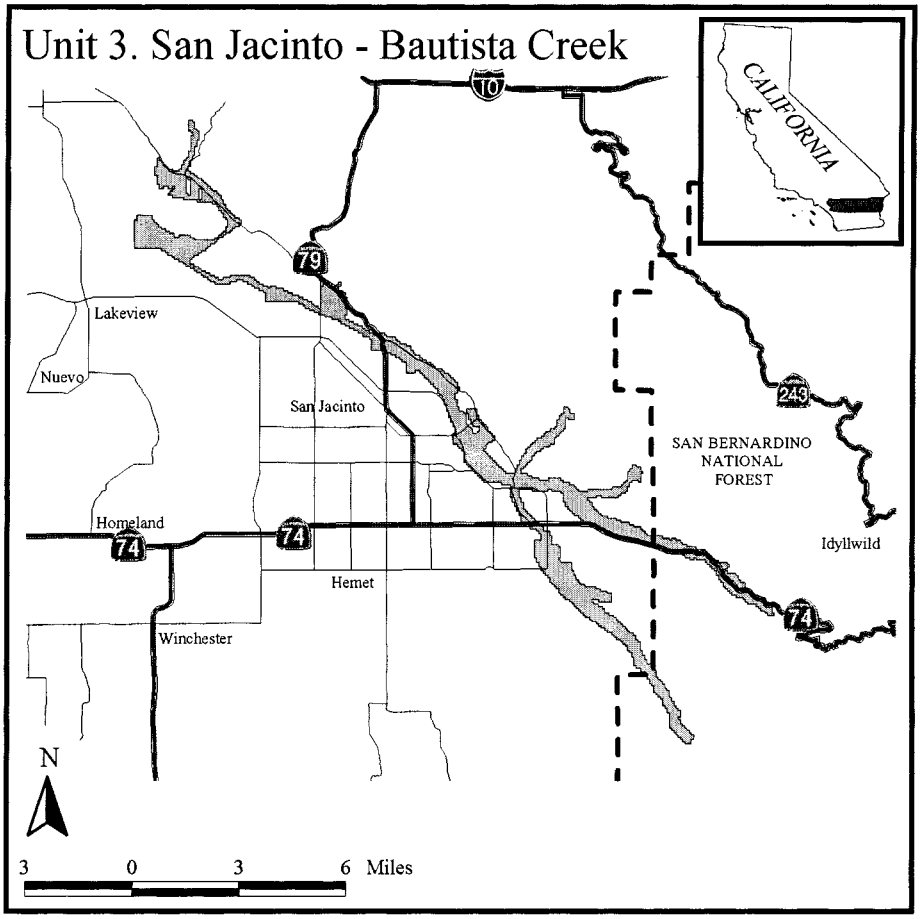

Map Unit 4: Etiwanda Alluvial Fan and Wash, San Bernardino County, California. From USGS 1:24,000 quadrangle maps Fontana (1980), Guasti (1981), Devore (1988), and Cucamonga Peak (1988), California, land bounded by the following UTM NAD27 coordinates (X, Y): 455000, 3781700; 455300, 3781700; 455300, 3781500; 455400, 3781500; 455400, 3781300; 455500, 3781300; 455500, 3781100; 455700, 3781100; 455700, 3781000; 455800, 3781000; 455800, 3780800; 455500, 3780800; 455500, 3780900; 455400, 3780900; 455400, 3780800; 455300, 3780800; 455300, 3780500; 455200, 3780500; 455200, 3780100; 455100, 3780100; 455100, 3778800; 455000, 3778800; 455000, 3778700; 454600, 3778700; 454600, 3779000; 454500, 3779000; 454500, 3779200; 454400, 3779200; 454400, 3779400; 454500, 3779400; 454500, 3780100; 454400, 3780100; 454400, 3780200; 454200, 3780200; 454200, 3780400; 453900, 3780400; 453900, 3778800; 454300, 3778800; 454300, 3778000; 454400, 3778000; 454400, 3778100; 454500, 3778100; 454500, 3778200; 454900, 3778200; 454900, 3778300; 455000, 3778300; 455000, 3778500; 455100, 3778500; 455100, 3778700; 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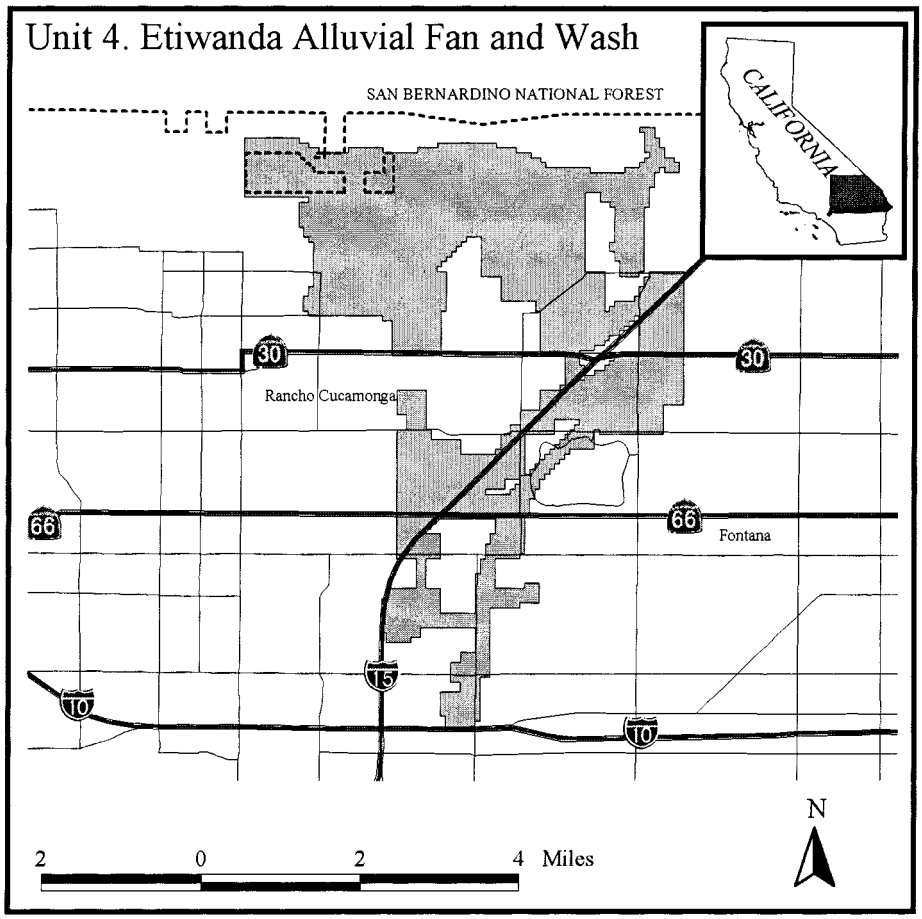
Unit 4. Etiwanda Alluvial Fan and Wash
SAN BERNARDINO NATIONAL FOREST
CALIFORNIA
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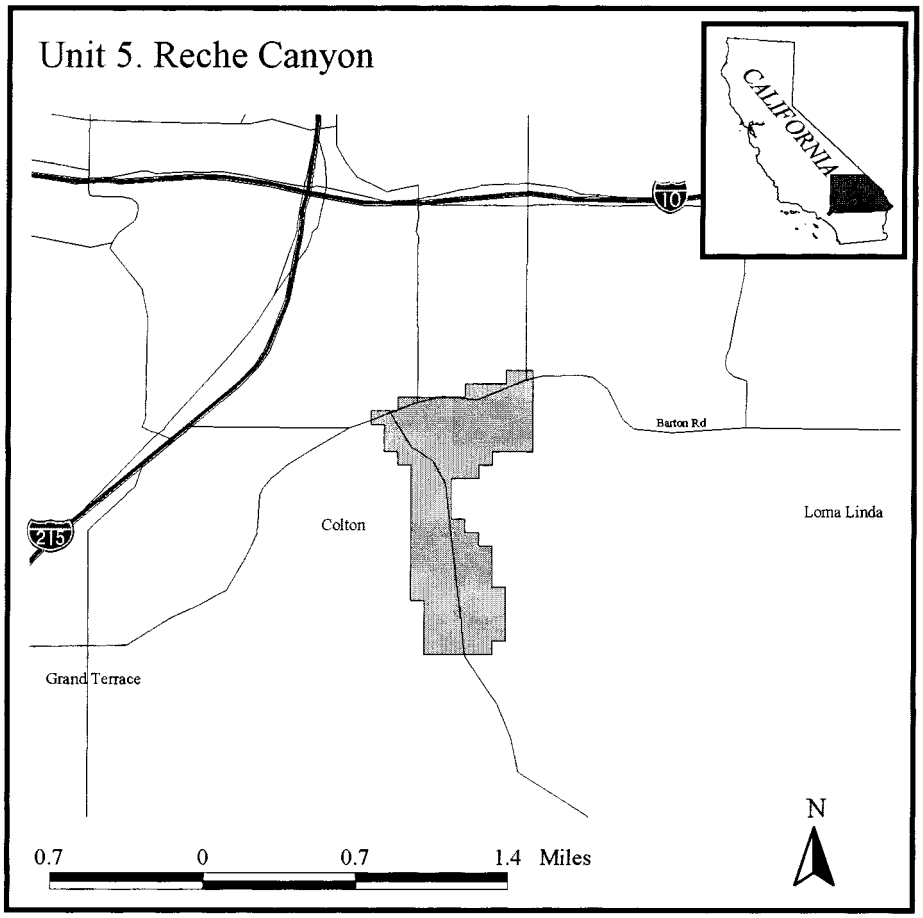
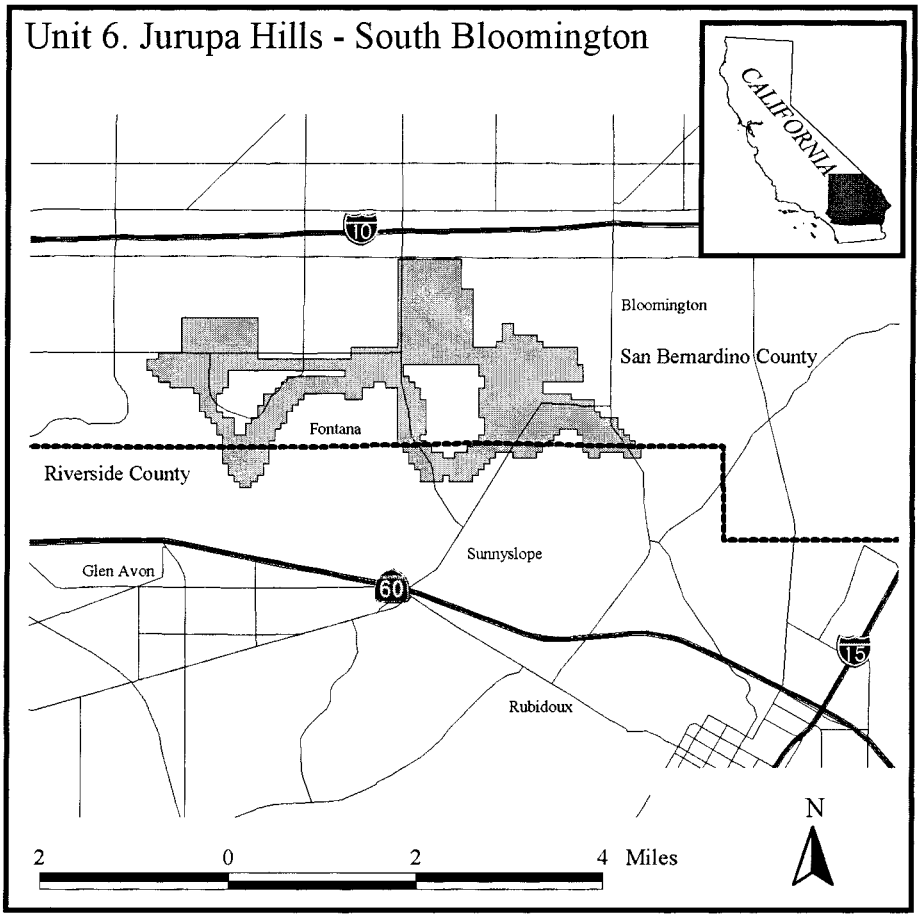
30
Rancho Cucamonga
66
66
Fontana
15
10
10
N
2
0
2
4
Miles

Map Unit 5: Reche Canyon, San Bernardino County, California. From USGS 1:24,000 quadrangle map San Bernardino South (1980), California, land bounded by the following UTM NAD27 coordinates (X, Y): 474200, 3767800; 474400, 3767800; 474400, 3767200; 474100, 3767200; 474100, 3767100; 474000, 3767100; 474000, 3767000; 473800, 3767000; 473800, 3766700; 473900, 3766700; 473900, 3766600; 474000, 3766600; 474000, 3766500; 474100, 3766500; 474100, 3766200; 474200, 3766200; 474200, 3765800; 474100, 3765800; 474100, 3765700; 473600, 3765700; 473600, 3766100; 473500, 3766100; 473500, 3767100; 473400, 3767100; 473400, 3767200; 473300, 3767200; 473300, 3767400; 473200, 3767400; 473200, 3767500; 473400, 3767500; 473400, 3767600; 473900, 3767600; 473900, 3767700; 474200, 3767700; 474200, 3767800.



Map Unit 6: Jurupa Hills—South Bloomington, San Bernardino and Riverside Counties, California. From USGS 1:24,000 quadrangle map Fontana (1980), California, land bounded by the following UTM NAD27 coordinates (X, Y): 459800, 3769000; 460900, 3769000; 460900, 3768500; 461100, 3768500; 461100, 3767500; 461500, 3767500; 461500, 3767600; 461600, 3767600; 461600, 3767900; 461800, 3767900; 461800, 3767700; 462200, 3767700; 462200, 3767600; 462300, 3767600; 462300, 3767500; 462900, 3767500; 462900, 3767200; 463000, 3767200; 463000, 3766900; 462300, 3766900; 462300, 3766700; 462800, 3766700; 462800, 3766600; 463200, 3766600; 463200, 3766400; 463300, 3766400; 463300, 3766300; 463600, 3766300; 463600, 3766100; 463700, 3766100; 463700, 3766000; 463800, 3766000; 463800, 3765900; 463900, 3765900; 463900, 3765800; 464000, 3765800; 464000, 3765600; 463700, 3765600; 463700, 3765700; 463300, 3765700; 463300, 3765600; 463100, 3765600; 463100, 3765700; 463000, 3765700; 463000, 3766000; 462900, 3766000; 462900, 3766100; 462600, 3766100; 462600, 3766000; 462500, 3766000; 462500, 3765900; 462400, 3765900; 462400, 3765800; 462300, 3765800; 462300, 3765700; 462200, 3765700; 462200, 3765600; 461800, 3765600; 461800, 3765700; 461500, 3765700; 461500, 3765600; 461400, 3765600; 461400, 3765500; 461300, 3765500; 461300, 3765400; 461200, 3765400; 461200, 3765300; 461100, 3765300; 461100, 3765200; 460700, 3765200; 460700, 3765300; 460600, 3765300; 460600, 3765200; 460200, 3765200; 460200, 3765400; 460100, 3765400; 460100, 3765500; 460000, 3765500; 460000, 3765700; 459900, 3765700; 459900, 3765800; 459800, 3765800; 459800, 3766800; 459600, 3766800; 459600, 3766900; 459400, 3766900; 459400, 3766800; 459200, 3766800; 459200, 3766600; 458900, 3766600; 458900, 3766700; 458200, 3766700; 458200, 3766600; 458100, 3766600; 458100, 3766500; 458000, 3766500; 458000, 3766400; 457900, 3766400; 457900, 3766200; 457800, 3766200; 457800, 3766100; 457700, 3766100; 457700, 3765900; 457600, 3765900; 457600, 3765500; 457500, 3765500; 457500, 3765300; 457400, 3765300; 457400, 3765200; 457300, 3765200; 457300, 3765100; 457100, 3765100; 457100, 3765200; 457000, 3765200; 457000, 3765300; 456900, 3765300; 456900, 3765500; 456800, 3765500; 456800, 3766000; 456700, 3766000; 456700, 3766200; 456600, 3766200; 456600, 3766300; 456500, 3766300; 456500, 3766400; 456400, 3766400; 456400, 3766700; 456300, 3766700; 456300, 3766800; 455900, 3766800; 455900, 3766900; 455700, 3766900; 455700, 3767000; 455600, 3767000; 455600, 3767100; 455500, 3767100; 455500, 3767300; 455700, 3767300; 455700, 3767400; 456100, 3767400; 456100, 3768000; 457400, 3768000; 457400, 3767300; 459000, 3767300; 459000, 3767500; 459800, 3767500; 459800, 3769000; excluding land bounded by 459900, 3767200; 459900, 3767000; 460000, 3767000; 460000, 3766900; 460100, 3766900; 460100, 3766800; 460200, 3766800; 460200, 3766600; 460300, 3766600; 460300, 3766000; 460200, 3766000; 460200, 3765900; 460300, 3765900; 460300, 3765800; 460400, 3765800; 460400, 3765700; 460600, 3765700; 460600, 3765600; 460800, 3765600; 460800, 3765700; 461000, 3765700; 461000, 3765800; 461100, 3765800; 461100, 3765900; 461200, 3765900; 461200, 3766000; 461300, 3766000; 461300, 3766300; 461200, 3766300; 461200, 3766800; 461300, 3766800; 461300, 3767000; 461200, 3767000; 461200, 3767200; 459900, 3767200; and land bounded by 456900, 3767100; 456900, 3766800; 456800, 3766800; 456800, 3766700; 456700, 3766700; 456700, 3766400; 456800, 3766400; 456800, 3766300; 457000, 3766300; 457000, 3766000; 457200, 3766000; 457200, 3766200; 457300, 3766200; 457300, 3766300; 457400, 3766300; 457400, 3766500; 457500, 3766500; 457500, 3766700; 457700, 3766700; 457700, 3766800; 457800, 3766800; 457800, 3766900; 457900, 3766900; 457900, 3767000; 458900, 3767000; 458900, 3767100; 456900, 3767100.



Dated: December 1, 2000.

Kenneth L. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–31175 Filed 12–7–00; 8:45 am]

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Federal Register

Friday,
December 8, 2000

Part V

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 440

Weatherization Assistance Program for Low-Income Persons; Final Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 440

(RIN 1904–AB05)

Weatherization Assistance Program for Low-Income Persons

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Interim final rule.

SUMMARY: The Department of Energy is issuing an interim final rule to amend the regulations for the Weatherization Assistance Program for Low-Income Persons to incorporate the regulatory changes proposed in the notice of proposed rulemaking published in the **Federal Register** on January 26, 2000. The preamble of this interim final rule also discusses the new legislative amendments that Congress recently enacted which were not a part of the proposed rulemaking. These statutory amendments, as well as other clarifying language from previous rulemakings will be incorporated into the program regulations in a final rule to be issued by the Department early next year. This interim final rule adds clarifying language, deletes obsolete language, and improves the overall operation of the Program to assist State and local agencies in administering the Program.

DATES: Effective January 8, 2001. Written comments are due January 8, 2001.

ADDRESSES: Send written comments (three copies) to Greg Reamy, Weatherization Assistance Program Division, U.S. Department of Energy, Mail Stop EE–42, 5E–066, 1000 Independence Avenue, SW., Washington, DC 20585. Copies of any comments received will be available for inspection between the hours of 9:00 am and 4:00 pm, Monday through Friday, except Federal holidays at the following address: DOE Freedom of Information Reading Room, Department of Energy, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–3142.

FOR FURTHER INFORMATION CONTACT: Greg Reamy, Weatherization Assistance Program Division, U.S. Department of Energy, Mail Stop EE–44, 5E–066, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4074.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Amendments to the Weatherization Assistance Program
III. Opportunities for Public Comment
IV. Procedural Requirements
V. Other Federal Agencies
VI. The Catalog of Federal Domestic Assistance

I. Introduction

The Department of Energy (DOE or Department) amends the program regulations for the Weatherization Assistance Program for Low-Income Persons (WAP or Program). This Program is authorized by Title III of the Energy Conservation and Production Act, as amended (Act), 42 U.S.C. 6561 *et seq.* The changes are necessitated by the evolution of the Program since the last publication of the rule on June 5, 1995 (60 FR 29470). These changes help States by clarifying sections of the rule, thereby enhancing the interpretation and application of the program requirements. Some of the definitions in § 440.3 are clarified and, where needed, new definitions are added to provide a clearer and more concise meaning to States and local agencies who must interpret these regulations. Other sections applying to energy audits and allowable expenditures are clarified to enhance their meanings; and certain obsolete items are deleted. Other regulatory changes in today's rulemaking: add new and eliminate obsolete terms in the Program definitions; add ''household with a high energy burden'' and ''high residential energy user'' as new categories for those receiving priority service; create a separate cost category for health and safety expenditures; provide flexibility on the purchase of vehicles by local agencies; reduce the eligibility criteria for certain large multi-family buildings to 50 percent; establish new minimum energy audit criteria for the Program; and revise the date for reweatherization from 1985 to 1993.

Prior to developing and issuing this interim final rule, a proposed rulemaking was issued by DOE on January 26, 2000 (65 FR 4331) after consulting with its primary stakeholders, representatives of both State and local agencies, to listen to their concerns about what issues they wanted DOE to consider. The Program has evolved from a relatively simple approach of providing service to low-income homes with unskilled labor, installing low-cost/no cost retrofits, to a program that conducts advanced diagnostics and installs cost-effective energy conservation materials. The increased demand to maintain highly-trained crews has placed added strain on State and local agencies efforts to sustain a quality level of service to its low-income clients. Many of the changes lessen the administrative burden and provide flexibility for State and local agencies to incorporate the ever-changing technical enhancements as they become available. These changes also make State and local agencies better-suited to attract non-Federal leveraged resources into their programs. This interim final rule attempts to address as many of those concerns as possible. Many of the concerns that the stakeholders raised to DOE were not of a regulatory nature and were addressed administratively through program guidance documents.

Other concerns were statutory in nature and formed the basis of the legislative initiative proposed to the Congress. The Department proposed on September 20, 1999 several statutory changes developed during discussions with State and local stakeholders. These proposed statutory changes were enacted on November 9, 2000, as part of the Energy Policy and Conservation Act Amendments of 2000. These statutory changes: (1) Eliminate the requirement in § 440.18 that 40 percent of the funds used to weatherize a home be spent for materials; (2) restructure the method in § 440.18 by which States compute their average cost per home by increasing the average cost per home to $2,500 beginning in 2000; and (3) eliminate the separate per dwelling unit average in § 440.18 for capital intensive improvements and include capital intensive costs as a part of the average costs. The Department will issue a final rule that will incorporate these changes into the program regulations early next year.

DOE plans to include in the preamble of the final rule clarifying language on several areas of the program regulations where no actual changes were made. This action will provide States and local agencies the benefit of explanatory language used in the preambles of previous rulemakings which are still applicable today. This is necessary since many State and local staffs have changed several times over the years and much institutional knowledge has been lost. A comprehensive final rule will provide Federal, State, and local agency staff a central document for program regulatory information. This will also help in providing uniform interpretation of the regulations at all levels of the Program.

II. Amendments to the Weatherization Assistance Program

Section 440.1 Purpose and Scope

DOE deletes the first sentence in the Scope and Purpose since this information is duplicative of what is

stated elsewhere in the rule. DOE amends the Purpose and Scope to add to the priority categories the terms ''high residential energy user'' and ''household with a high energy burden.'' By adding these two categories, States are better able to prioritize their low-income clients by targeting those experiencing high energy costs and burden, thereby addressing those units with the greatest potential for energy savings. Additionally, by including these two categories, State and local agencies are better able to coordinate services with other Federal programs and leveraging opportunities. The current priority categories of the elderly, persons with disabilities, and families with children remain unchanged. Definitions for these two terms are discussed in § 440.3.

Section 440.3 Definitions

DOE proposed in the notice of proposed rulemaking (NOPR) to include rule language in § 440.21(h)(1) to encourage States to set the temperature(s) used to calculate heating and cooling degree data to more reasonably reflect their housing stock and climate, thereby reducing the overestimation of energy savings for most measures. By using, and defining in § 440.3, the term ''balance point temperature,'' which is also used to describe the outside temperatures which require operation of heating or cooling equipment to maintain comfort, the proposed change was interpreted by some comments to be more substantial than DOE intended. To clarify the change described in § 440.21(e)(1) of the interim final rule, DOE is substituting a new term and definition for ''base temperature'' that replaces the definition of ''balance point temperature'' given in the NOPR.

DOE adds a definition for ''electric base-load measures'' to describe energy use outside of the traditional weatherization approach to heating and cooling and building envelope measures. As the Program evolves over the next several years into a whole house approach, DOE believes that electric base-load measures, which account for more than half the energy used in a typical household, are important when considering total residential energy use. Limited lighting measures are currently permitted in the Program and in the near future DOE may consider including other electric base-load measures such as the replacement of certain appliances. Most of the comments supported this change.

DOE adds the term ''high residential energy user'' which means a low-income household whose residential energy expenditures exceed the median level of residential expenditures for all low-income households in the State. The definition for this category permits State and local agencies to better coordinate their activities and resources with many utility programs. Most of the comments supported this change.

DOE also adds the term ''household with a high energy burden'' which means a low-income household whose residential energy burden (residential expenditures divided by the annual income of that household) exceeds the median level of energy burden for all low-income households in the State. The definition for this category gives States and local agencies greater flexibility in determining priority service for those households that may not have traditional priority individuals such as the elderly, persons with disabilities, or families with children, but are experiencing a particular hardship due to their high energy costs.Most of the comments supported this change.

DOE substitutes the term ''persons with disabilities'' for the term ''handicapped'' to reflect the current accepted reference. The definition remains unchanged.

DOE considered both State and local agency concerns over the definition of ''low-income'' and the difficulties in effectively administering, coordinating, and leveraging between various Federal low-income programs using different definitions. However, in a review of the Act and the legislative history of the Program, DOE chose not to amend the existing definition. The comments were generally supportive, but stated that DOE should consider raising the eligibility criteria to be more compatible with other Federal programs. The DOE Weatherization Assistance Program was established to serve the neediest Americans. To expand the eligibility requirements to facilitate coordination with other Federal programs either through increasing eligibility to 80 percent of the poverty level, permitting census tracking of neighborhoods, or allowing area average median income levels would change the scope and purpose of the Program. More importantly, expanding the eligibility criteria would substantially increase the number of households eligible for assistance which already stands at over 29 million. DOE has addressed this issue in detail in the annual program grant guidance.

Section 440.14 State Plans

DOE reorganizes and revises § 440.14 to eliminate unnecessary and duplicative information. The comments stated that some of these requirements are no longer needed and should be eliminated to reduce paperwork and time in the production of the annual State plan. In reorganizing this section, DOE grouped items together relating to the public hearing. Items specific to the development of the State plan are also placed together. The information for the production schedule is now projected annually instead of quarterly and includes the number of previously weatherized homes expected to be weatherized.

DOE eliminates § 440.14(b)(2), (6), (7), and (b)(8)(iii). The comments agreed with DOE that this information requirement resulted in the States providing little more than meaningless estimates to DOE. States will continue to report to DOE the number of persons served in each of these groups.

DOE retains the requirement for information on the number of dwelling units expected to be weatherized for each area, but eliminates the expected number of previously weatherized units for each area. States have no idea how many previously weatherized homes can be expected to be weatherized for each area of the State.

Section 440.14(c)(6)(xi) retains from proposed § 440.14(b)(6)(xi) the requirement that States identify and describe the type of audit that meets the criteria outlined in § 440.21 and that DOE has approved. However, the reference to Project Retro-Tech or another DOE-approved audit is eliminated in this section as well as in § 440.21.

Section 440.15 Subgrantees

DOE amends § 440.15(a)(3)(iv) to eliminate the reference to ''JTPA'' and replace it with ''other Federal or State training programs.'' The JTPA Federal program was repealed effective July 1, 2000 pursuant to Pub. L. 105–220. The comments supported this change.

Section 440.16 Minimum Program Requirements

DOE adds clarifying language to § 440.16(b) to allow States to include ''high residential energy user'' and ''household with a high energy burden'' as priority groups among those receiving weatherization services. The use of the two new priority categories is not mandatory. Comments received were generally favorable to this change. Most comments stated that by adding these two categories, DOE has provided State and local agencies with expanded flexibility to choose the categories for priority which best serve their respective programs.

DOE amends § 440.16(d) to eliminate the reference to ''JTPA'' and replace it

with ''other Federal or State training programs.'' The JTPA Federal program was repealed effective July 1, 2000 pursuant to Pub. L. 105–220. States should describe any ''other Federal or State training program'' they will be using in their annual State plans as sources of labor. The comments supported this change.

Section 440.17 Policy Advisory Council

DOE received numerous comments expressing concern that DOE was proposing to eliminate the Policy Advisory Council (PAC). Many argued that the PAC performs very well in the States and provides a unique insight on many poverty issues, including weatherization. They stated that a State-body would not offer the same independent oversight and that the low-income would lose an important voice for the local agency in managing poverty programs. In proposing this flexibility to the State, DOE did not mean to imply that the State had the authority to replace without due cause any PAC. Rather, the State must show cause to DOE that the existing PAC is either non-existent or is not functioning as outlined in § 440.17. DOE is aware that in most instances, the PAC does work as it was intended. DOE also would give preference to any legitimate PAC that is replaced for cause by a State council or commission and then later reconstituted. DOE agrees with the comments that the traditional role played by the PAC should be protected by the regulations. However, DOE and the States are also concerned that in some States, the PAC does not function as intended and is, in some instances, simply non-existent.

Therefore, DOE amends § 440.17(a) to include the language ''or a State commission or council'' which meets the criteria in § 440.17 and is approved by DOE. Many State agencies which operate the DOE Weatherization Assistance Program have existing commissions or councils which review and approve policies and plans for many other Federal programs. States which opt to utilize an existing commission or council have to certify to DOE, as a part of the annual application, that the council or commission is an independent reviewer of activities for the Program, and that the State will address this issue as a part of the public hearing held on the State Plan. Therefore, any person(s) employed in any State Weatherization Program can also be a member of an existing commission or council but will have to abstain in reviewing and approving the activities associated with the DOE Weatherization Assistance Program.

Section 440.18 Allowable Expenditures

DOE deletes from § 440.18(b) and (b)(2)(i) references to (c)(15), the cost of eliminating health and safety hazards from the amount of funds used to determine the average cost per home. State and local agencies indicated to DOE that including the cost of health and safety into the amount of funds that can be spent on a home severely restricts their flexibility to operate effectively their programs. In providing for this flexibility, DOE agrees that excluding these costs from the average cost per home would afford States and local agencies the opportunity to fund advanced technology practices into their weatherization programs while reducing their administrative burden.

In the notice of proposed rulemaking, DOE proposed to create a separate line item for the cost of purchasing vehicles. DOE solicited comments on this proposal as well as an alternative approach which effectively deferred this large cost over both the life of the vehicle and the number of homes served during that period. DOE has decided to not create a separate line item because this distorts the actual cost of weatherization work done on a home. In accepting the alternative proposal in this interim final rule, DOE retains the cost of purchasing vehicles as a part of the amount of funds used to determine the average cost per home currently in § 440.18(c)(6).

For some local agencies, purchasing vehicles under the existing rule often forced them to seek low cost weatherization candidate homes in order to maintain their normal operation while ignoring potentially higher energy savings homes. To address the concerns expressed by State and local agencies that the cost of these vehicles and certain types of equipment included in the average cost per home calculation placed an undue burden on them, DOE amends § 440.18(b) by adding paragraph (3). This paragraph allows State and local agencies to determine the average cost per unit by excluding from the average per unit cost calculations that portion of the purchase cost of vehicles and certain types of equipment made during that particular funding year. Thus, States may amortize these costs in their average cost calculations so that only that fraction of the cost of a new vehicle or equipment purchase which was actually ''used'' during the current year is included.

For example, if a local agency purchases a new vehicle for $24,000 with an expected life of the vehicle of 8 years (96 months), then the cost of that vehicle could be amortized at the rate of $3,000 per year or $250 per month. This approach also affects certain types of equipment purchases having a useful life of more than one year and a cost of $5,000 or more as defined by 10 CFR part 600. It also permits local agencies to spread these costs out over the useful life of the vehicle or equipment purchase, even though the full purchase price is reported in the year in which it occurs. DOE will address the specific reporting requirements for amortized costs for vehicle and equipment purchases in program guidance.

The comments generally supported the proposed extension of the date by which a dwelling unit can be reweatherized. Therefore, DOE amends § 440.18(e)(2)(iii) by extending the date by which homes can be reweatherized from 1985 to 1993. Previously, DOE extended this date from 1975 to 1985 based on the evolution of the Program. Between 1975 and 1979, the Program addressed primarily building envelope measures. In 1985, the Program expanded to place more emphasis on mechanical measures, including furnace efficiency modifications. Since the last rulemaking which introduced new criteria for advanced energy audits, virtually all States have improved their energy auditing techniques. DOE acknowledges this overall program improvement by the States and is confident that by extending the date to 1993, those homes weatherized between 1985 and 1993 will provide an even greater opportunity to achieve increased energy efficiency. DOE also reminds States that homes which become candidates for reweatherization must have a new energy audit performed and that audit will take into consideration any previous weatherization improvements done on the home.

Section 440.19 Labor

DOE revises § 440.19 by deleting references to JTPA and replacing it with ''other Federal or State training programs.'' The JTPA Federal program was repealed effective July 1, 2000 pursuant to Pub. L. 105–220.

Section 440.21 Standards and Techniques for Weatherization

DOE proposed in the NOPR to rename, reorganize, and revise this entire section. The significant changes in response to public comments incorporated into this interim final rule further revise, reorganize, and renumber the paragraphs constituting § 440.21.

The proposed name change more accurately reflects the subject matter of

§ 440.21. The other major changes eliminate the base audit criteria and make the waiver audit criteria the minimum criteria for an energy audit used in the Program. In its final rule published on March 4, 1993 (58 FR 12525), DOE provided for a waiver of the 40-percent material cost requirement described in § 440.18(a) for those States that adopted advanced energy audit procedures. Today, virtually all of the States have incorporated an approved waiver audit and received a waiver of this requirement from DOE. Within the next year, all States will be using an approved waiver audit.

In the NOPR published on January 26, 2000 (65 FR 4338), DOE proposed to make the existing waiver energy audit requirements the new minimum standard for all energy audit procedures. The 40-percent material cost requirement and the waiver provisions have become unnecessary and their suggested elimination from the statute is discussed later in this rule. States and local agencies have made great strides in improving the energy auditing techniques used in their programs during this decade. Investments in time and resources have paid dividends in the form of greater energy efficiency and savings on the types of materials and the installation techniques used in the Program.

To implement this change, DOE proposed to delete all references to Project Retro-Tech audit procedures and the simplified cost-effectiveness tests used with Project Retro-Tech. DOE proposed that all energy audits require calculation of a savings-to-investment ratio for weatherization measures, and assignment of priorities based on the resulting figures consistent with the life-cycle cost methodology developed by DOE's Federal Energy Management Program and the National Institute of Standards and Technology (NIST). While the cost-effectiveness requirements for the selection of weatherization measures under the waiver audit criteria were generally not made more stringent, they were described in more detail since they were to become the minimum criteria.

Of the 71 total comments that DOE received on the NOPR, 60 contained comments regarding the proposed changes to § 440.21. A large number of comments (46) expressed the belief that § 440.21 was overly complicated, detailed, and prescriptive in contrast to the simplification afforded by the rest of the proposed rule changes. These comments suggested that much of the text in § 440.21 should be moved to policy guidance. Further, the comments suggested that the proposed language locked the program into terminology and technology that time and research may supersede.

Based on these comments, DOE agrees to simplify § 440.21 by moving many of the details describing the cost-effectiveness requirements for measure selection from the regulations to policy guidance. Only a brief, general description of the cost-effectiveness requirement remains in the rule text.

In § 440.21(f)(1) of the NOPR, DOE proposed to address the interaction of measures by including the phrase ''using generally accepted engineering methods'' to remind States to use reasonable energy-estimating methods and assumptions to account for the interaction among weatherization measures. Since no comments were received, § 440.21(d)(1) of the interim final rule includes this change.

In § 440.21(d) of the NOPR, DOE proposed to include the sentence, ''The lifetime of materials must not exceed the remaining useful life of the dwelling,'' to acknowledge that the low-income housing stock served by some programs is in poor condition. A weatherization measure may appear to be cost-effective assuming the energy cost savings accrue over the entire 20-year economic life of the material, but may not be cost-effective if the energy savings accrue over a shorter period of time in light of the remaining useful dwelling life, for example, ten years.

Three comments pointed out the difficulty in determining accurately the remaining useful life of a dwelling and the possible adverse impacts related to this proposed requirement. In response to these comments as well as to other comments, DOE has agreed to remove from the rule the language containing this proposed requirement. The guidance that is eventually issued to detail the cost-effectiveness requirements will not mandate that the remaining useful life of a dwelling be used in the life-cycle cost calculations. However, States will be encouraged in the guidance to consider remaining use dwelling life when selecting the most appropriate measures in light of the legislative requirement to measure the rate of return of the total conservation investment. Determining when the remaining useful life of a dwelling may impact the cost-effectiveness calculations of weatherization measures and estimating the remaining useful life of such dwellings should be left to the discretion of the local agency.

Ten comments questioned the impact of specifying the use of FEMP life-cycle costing analysis methods to determine measure cost-effectiveness. The comments expressed concern about what would happen if FEMP did not establish standards for every material or measure that may be cost-effective in low-income households. DOE specified the FEMP annual supplement as a convenient source for the discount rate and, if used, the fuel cost escalation rates used to calculate savings-to-investment ratios since the existing rule language did not give States an easy-to-use information source. The FEMP Handbook and annual supplement discuss life-cycle costing of any and all energy conservation investments and do not address material standards. However, in simplifying § 440.21 and moving many of the cost-effectiveness details to policy guidance, references to FEMP have been removed from the rule. Annually, DOE will either distribute the FEMP annual supplement to each State, or inform the States when the supplement is published and how it may be obtained.

In § 440.21(h) of the NOPR, DOE proposed changes to the energy audit requirements that do not pertain to life-cycle costing methods. DOE proposed in paragraph (h)(1) of the NOPR to substitute the phrase ''climatic data'' for the existing ''number of heating or cooling degree days'' to acknowledge that other types of weather data besides heating and cooling degree days can be used in the estimation of fuel cost savings. Since no comments were received, this change is included in § 440.21(e)(1) of the interim final rule.

DOE proposed in § 440.21(h)(1) of the NOPR to include rule language to encourage States to set the balance point temperature(s) used in conjunction with heating and cooling degree data to more reasonably reflect the outside temperatures which require operation of heating or cooling equipment to maintain comfort. Three comments questioned how balance point temperatures would realistically be incorporated into the program, and noted that many currently approved audits did not estimate balance points as NEAT does. The use of the term ''balance point temperature'' instead of the more appropriate ''base temperature'' made the proposed change appear more substantial than DOE intended.

Heating degree days are computed by subtracting the average daily temperature from a base temperature, which has traditionally been 65°F. The traditional heating degree day base temperature assumes that the furnace needs to run at outside temperatures less than 65°F. In reality, the furnace is typically not needed until the outside temperature drops below around 60°F due to the heat generated by lights,

appliances, and people. Because of the thermal mass of a dwelling and other reasons, air conditioning is not usually required until outside temperatures exceed the traditional cooling degree day base temperature (65°F) by about 5 to 10°F.

Encouraging States to use degree day data calculated at base temperature(s) that more reasonably reflect their housing stock and climate would not only reduce the overestimation of energy savings for most measures, but would also more accurately model their true cost-effectiveness. While ideally the base temperature(s) used would be the building's balance point, DOE recognizes the prohibitive analytical burden this would impose. Instead, States are encouraged to select appropriate heating and cooling degree day base temperatures based on the validation of their energy estimating software or other reasonable basis. DOE has substituted the term ''base temperature'' (and definition in § 440.3) for proposed ''balance point temperature'' in § 440.21(e)(1) of the interim final rule and reworded this paragraph to more accurately reflect the intended change.

The State Energy Efficiency Programs Improvement Act of 1990, which amended 42 U.S.C. 6861 *et seq.*, stated that energy audit procedures should ''establish priorities for selection of weatherization measures based on their cost and contribution to energy efficiency.'' DOE interprets this language, in part, to mean that advanced energy audit procedures should consider energy efficiency as well as total energy savings. For example, replacing an existing space heater being used to heat a single room, with a more energy efficient central furnace, capable of heating the whole house, would probably increase energy use even as it improved energy efficiency. The occupants would also be better able to use the entire dwelling unit. Unless undertaken for health and safety reasons, this measure must be cost justified by the audit. Addressing energy efficiency in this case would require a cost justification that compares the energy usage of the central unit to the energy usage of heating the entire home with space heaters.

The existing rule language addressing this issue states that energy audit procedures must ''consider the rate of energy use,'' which does not clearly describe the need to look at both energy efficiency and total energy savings. To more directly address situations similar to the space heater example, DOE proposed instead to include the phrase ''and energy requirements.'' This proposed change combined the requirement to determine the existing energy use with the need to determine existing energy requirements from actual energy bills or by generally accepted engineering calculations. As in the space heater example, the energy requirements of a dwelling unit may exceed its existing energy use.

The one comment addressing this proposed change agreed with the need to consider both energy efficiency and total energy savings. However, the comment expressed concern about encouraging the conversion of zone, or room, heating systems to whole-house systems. DOE realizes that these types of situations must be considered on a case-by-case basis, but believes that the proposed change clarifies the original intent of the legislation. Therefore, DOE has included this change in § 440.21(e)(2) of the interim final rule.

Proposed § 440.21(h)(7) included language to remind States that DOE would have to approve an energy audit for each major dwelling type covered by the State's weatherization program in light of the different energy audit requirements of single-family dwellings, multi-family buildings, and mobile homes. One comment expressed concern about this requirement for programs that only weatherize a few mobile homes or multifamily buildings each year. The comment stated that the requirement should only apply if mobile homes or multifamily buildings represented over five percent of the units weatherized by the State each year. Based on this comment, DOE has included in § 440.21(e)(7) of the interim final rule revised language which states, ''that represents a significant portion of the State's weatherization program.'' Future guidance will define ''significant'' at an appropriate level to be determined.

Proposed § 440.21(i) included language that clarified the type of information DOE currently requires to approve State priority lists for similar dwelling units. When States submit to DOE their request for priority list approval, they often do not provide sufficient detail. For example, an adequate description of the types of dwelling units (*e.g.,* 1-story ranch, 1½-story Cape Cod) covered by the priority list(s) often is missing. The methodology used to select the representative sample of dwellings used to develop the priority list often is not explained, nor are the circumstances that will require a site-specific audit in lieu of the priority list adequately described. The increased energy savings resulting from advanced energy audit procedures could be compromised by priority lists that are not based on truly typical housing stock or used without comprehensive guidelines that tell an auditor when atypical circumstances require a site-specific audit.

Three comments disapproved of the perceived increased DOE scrutiny of priority lists. While DOE encourages the site-specific energy audit of every dwelling weatherized, it realizes that this is often not possible considering the constraints on field staff imposed by funding limitations and production pressures. The comments suggested that time spent conducting an energy audit might be better spent on increasingly sophisticated diagnostic testing to ensure that the dwelling is adequately ventilated, combustion appliances are operating safely and efficiently, and that the combustion appliances vent properly. DOE agrees that priority lists are valuable tools in reducing energy costs in the greatest possible number of low-income households. Yet, DOE is responsible for ensuring the technical soundness of priority lists in light of the substantial Federal investment. For this reason, DOE has retained in § 440.21(h) of the interim final rule the existing documentation requirements for the approval of priority lists.

One comment pointed out that proposed § 440.21(j), which requires every State to document the performance of the same presumptively cost-effective general heat waste (GHW) reduction materials, needlessly duplicates effort. The comment further noted that this documentation often comes from publications authored by DOE. The comment suggested that DOE issue an initial list of approved GHW materials as policy guidance. DOE agrees with this comment and has revised that paragraph, which is now § 440.21(g), and will issue guidance specifying approved GHW materials. States may request approval for GHW materials not listed in DOE policy guidance by providing the required documentation.

Existing regulations require priority lists to be revalidated every five years. To make the revalidation of priority lists more straightforward, DOE proposed in § 440.21(k) and (l) to require States to submit to DOE for approval every five years their complete energy audit procedures including priority lists and lists of general heat waste reduction materials. To revalidate their priority lists, States would have to re-run their energy audit on a subset of the similar dwellings that the priority list covers. Prior to the issuance of the NOPR, States have logically argued that their housing stock and typical housing types do not change significantly over a five-year

period. However, technologies, material and energy costs, and auditing tools do change. DOE encourages the continual improvement of audit tools as evidenced by new versions of NEAT over the years. The best and most current audit software should be used in developing priority lists. Additionally, since the latest version of a State's audit software may not have specific DOE approval, it makes sense for the DOE approval process to update the energy audit and priority lists every five years.

One comment supported the proposed change to include energy audit procedures in the priority list revalidation requirement. Five comments disagreed with the proposed change as well as the existing requirement to revalidate priority lists every five years. The comments against the proposed change argue that revalidation of priority lists should be based on factors that measure cost-effectiveness, such as fuel and material costs. While DOE does not wish to impose unnecessary documentation requirements on States, the Department is responsible for ensuring that only cost-effective weatherization measures be installed with DOE funds.

One comment argued that DOE-approved energy audits should stay approved until they no longer comply with the requirements. Since States constantly change and improve their energy audit practices and protocols, DOE believes it is prudent to conduct periodic technical assessments of States' entire energy auditing procedures. DOE looks at not just the energy audit software but how the State uses the software. DOE energy audit approval process reviews all of the procedures States use to select and install weatherization measures, as well as health and safety practices affecting clients and field crews.

Thirty-nine (39) comments stated that the process by which DOE reviews energy audits, including garnering State and expert input, should be described in the rule, as well as the process by which the Department will update the guidance. The comments also wanted DOE to include in the rule its plan for assuring uniform consideration by its regional offices and processes for appeals should a proposed audit be turned down. While existing guidance and review practices effectively address many of these concerns, DOE will revisit its energy audit approval process and will seek State and expert input. However, DOE believes that policy guidance is the most appropriate place to describe processes for reviewing energy audits and updating guidance since such processes are likely to change over time.

Although § 440.21(h) of the interim final rule retains the general five-year revalidation requirement, DOE has revised the proposed rule language to indicate that the policy guidance (issued after seeking State and expert input) will specify the information that States must submit and the circumstances that reduce or increase documentation requirements. The documentation required to revalidate priority lists will likely be substantially reduced in cases where the factors affecting the cost-effectiveness of weatherization measures on the priority lists (*e.g.,* housing stock, costs, energy estimating algorithms) have not changed significantly since original DOE approval.

Twenty-one (21) comments addressed the proposed § 440.21(k) requirement for States to submit to DOE for approval each new version of non-NEAT/MHEA energy audit software released subsequent to State-specific DOE approval. The comments were concerned that the requirement might stifle the adoption of evolutionary software improvements and would increase the reporting burden on States. As indicated in § 440.21(h) of the interim final rule, DOE agrees with these comments and will include in policy guidance (to be issued after seeking State and expert input) the reduced reporting requirements regarding new releases of energy audit software.

Thirty-nine comments suggested that the policy guidance should also address the manner in which new technologies will be addressed and incorporated into the program. These comments also asked how additional benefits other than energy efficiency, such as climate change benefits, will be added to the program. The Millennium Implementation Planning Committee has assembled a panel of stakeholders that is currently developing a new system to identify, assess, and incorporate advanced technology into the program in a more open and expedient manner. The non-energy benefits of the Weatherization Assistance Program are often included in overall program evaluations and program justification discussions. Perhaps the program can use these non-energy benefits to its advantage in future emissions trading systems. However, DOE believes more information on this issue needs to be explored before making a final decision.

One comment requested that the cleaning and tuning of air conditioners be added to Appendix A. The comment explained that an air conditioner clean and tune typically involves cleaning the cooling coil and straightening the fins. Under the heading ''Heating and Cooling System Repairs and Tune-Ups/Efficiency Improvements,'' cleaning heat exchangers of heating systems is listed. DOE considers the lack of a specific listing for cleaning cooling coils an oversight that will be resolved when Appendix A is updated in the near future.

In the preamble of the proposed rule, DOE indicated the possibility of proposing in the future a requirement for States to include overhead charges (such as costs for off-site supervisory personnel, tools, vehicles, etc.) in the savings-to-investment ratio calculations for individual weatherization measures. In that discussion, DOE stated that such costs are a significant fraction of the total costs of weatherizing individual homes and should, therefore, be considered in the assessment of the relative costs and benefits of measures. DOE received five comments on this suggestion. Four of the comments were interested in accounting for overhead costs but believed that these costs should perhaps be a part of an overall State evaluation of the Program instead of impacting measure selection on a home-by-home basis. DOE will continue to urge States to consider such overhead costs in the measure cost-effectiveness calculations. However, in developing any future proposal to require the inclusion of overhead costs, DOE intends to study this issue further with the stakeholders.

Section 440.22 Eligible Dwelling Units

DOE amends § 440.22(b)(2) to add certain eligible types of large multi-family buildings to the list of dwellings that are exempt from the requirement that at least 66 percent of the units are to be occupied by income-eligible households. In these large multi-family buildings, as few as 50 percent of the units would have to be certified as eligible before weatherization. This exception applys only to those large multi-family buildings where an investment of DOE funds would result in significant energy-efficiency improvement because of the upgrades to equipment, energy systems, common space, or the building shell. By providing this flexibility, local agencies are better-suited to select the most cost-effective investments and enhance their partnership efforts in attracting leveraged funds and/or landlord contributions. While most comments were supportive, several comments did suggest that this flexibility should be extended to cover all multi-family

buildings. In the proposed rule, DOE made it clear that this flexibility will be targeted to only these certain types of buildings because of the large investment involved and the potential for greater energy savings.

III. Opportunities for Public Comment

A. Participation in Rulemaking

The Department encourages public participation in this rulemaking. The Department has established a period of 30 days following publication of this interim final rule for persons to comment. You may review all public comments and other docket material in the DOE Freedom of Information Reading Room at the address shown at the beginning of this notice of the interim final rule.

B. Written Comment Procedures

Interested persons and organizations are invited to participate in this rulemaking by submitting data, views, or comments with respect to the interim final rule. Please provide three copies of your comments to the address indicated in the **ADDRESSES** section of this interim final rule. DOE will consider all timely-submitted comments and other relevant information before this rule becomes effective.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Today's interim final rule has been determined not to be ''a significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. DOE published a notice of proposed rulemaking to amend 10 CFR part 440 to give State and local agencies additional flexibility in addressing the weatherization needs of low-income citizens and to make other changes designed to streamline and update DOE's Weatherization Assistance Program. The proposed rule was developed following extensive consultation with State and local stakeholders and after reviewing comments received. DOE said that the proposed rule would have not any adverse economic impact on any small governments, organizations or businesses. Accordingly, DOE certified that the proposed rule, as promulgated, will not have a significant economic impact on a substantial number of small entities. DOE did not receive any comments of this certification, and the addition of mandated cost sharing requirements does not warrant reconsideration of the certification.

C. Review Under the Paperwork Reduction Act

No new collection of information is imposed by this interim final rule. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this interim final rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE regulations implementing the National Environmental Policy Act of 1969, (42 U.S.C. 4321 *et seq.*) Specifically, this interim final rule is covered under the Categorical Exclusion in paragraph A5 to subpart D, 10 CFR part 1021, which covers rulemakings that interpret or amend an existing regulation without changing the environmental effect of the regulation. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 10, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's interim final rule and has determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this interim final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate,'' and it requires an agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect small governments. The interim final rule published today does

not contain any Federal mandate, so these requirements do not apply.

H. Review under the Treasury and General Government Appropriations Act

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule or policy that may affect family well-being. Today's interim final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(3).

V. Other Federal Agencies

DOE provided draft copies of the interim final rule to the Department of Health and Human Services' Low-Income Home Energy Assistance Program and the Department of Agriculture's Farmers Home Administration. We have received no comments. DOE also provided a draft copy to the Administrator of the Environmental Protection Agency, pursuant to § 7 of the Federal Energy Administration Act, as amended, 15 U.S.C. 766. The Administrator has made no comments.

VI. The Catalog of Federal Domestic Assistance

The *Catalog of Federal Domestic Assistance* number for the Weatherization Assistance Program for Low-Income Persons is 81.042.

List of Subjects in 10 CFR Part 440

Administrative practice and procedure, Aged, Energy conservation, Grant programs-Energy, Grant programs-Housing and community development, Housing standards, Indians, Individuals with disabilities, Reporting and recordkeeping requirements, Weatherization.

Issued in Washington, DC, on November 29, 2000.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE amends part 440 of title 10, Code of Federal Regulations, as set forth below.

PART 440—WEATHERIZATION ASSISTANCE PROGRAM FOR LOW-INCOME PERSONS

1. The authority citation for part 440 is revised to read as follows:

Authority: 42 U.S.C. 6861 *et seq.*; 42 U.S.C. 7101 *et seq.*

2. Section 440.1 is revised to read as follows:

§ 440.1 Purpose and scope.

This part implements a weatherization assistance program to increase the energy efficiency of dwellings owned or occupied by low-income persons, reduce their total residential expenditures, and improve their health and safety, especially low-income persons who are particularly vulnerable such as the elderly, persons with disabilities, families with children, high residential energy users, and households with high energy burden.

3. In § 440.3:

a. Remove the definition for ''JTPA'';

b. Revise the words in the definitions for ''Handicapped Person'' to read ''Persons with disabilities'' and place it in alphabetical order; and

c. Add the following definitions in alphabetical order to read as follows:

§ 440.3 Definitions.

* * * * *

Base temperature means the temperature used to compute heating and cooling degree days. The average daily outdoor temperature is subtracted from the base temperature to compute heating degree days, and the base temperature is subtracted from the average daily outdoor temperature to compute cooling degree days.

* * * * *

Electric base-load measures means measures which address the energy efficiency and energy usage of lighting and appliances.

* * * * *

High residential energy user means a low-income household whose residential energy expenditures exceed the median level of residential expenditures for all low-income households in the State.

Household with a high energy burden means a low-income household whose residential energy burden (residential expenditures divided by the annual income of that household) exceeds the median level of energy burden for all low-income households in the State.

* * * * *

Non-Federal leveraged resources means those benefits identified by State or local agencies to supplement the Federal grant activities and that are made available to or used in conjunction with the DOE Weatherization Assistance Program for the purposes of the Act for use in eligible low-income dwelling units.

* * * * *

4. Section 440.14 is revised to read as follows:

§ 440.14 State plans.

(a) Before submitting to DOE an application, a State must provide at least 10 days notice of a hearing to inform prospective subgrantees, and must conduct one or more public hearings to receive comments on a proposed State plan. The notice for the hearing must specify that copies of the plan are available and state how the public may obtain them. The State must prepare a transcript of the hearings and accept written submission of views and data for the record.

(b) The proposed State plan must:

(1) Identify and describe proposed weatherization projects, including a statement of proposed subgrantees and the amount of funding each will receive;

(2) Address the other items contained in paragraph (c) of this section; and

(3) Be made available throughout the State prior to the hearing.

(c) After the hearing, the State must prepare a final State plan that identifies and describes:

(1) The production schedule for the State indicating projected expenditures and the number of dwelling units, including previously weatherized units which are expected to be weatherized annually during the program year;

(2) The climatic conditions within the State;

(3) The type of weatherization work to be done;

(4) An estimate of the amount of energy to be conserved;

(5) Each area to be served by a weatherization project within the State, and must include for each area:

(i) The tentative allocation;

(ii) The number of dwelling units expected to be weatherized during the program year; and

(iii) Sources of labor.

(6) How the State plan is to be implemented, including:

(i) An analysis of the existence and effectiveness of any weatherization project being carried out by a subgrantee;

(ii) An explanation of the method used to select each area served by a weatherization project;

(iii) The extent to which priority will be given to the weatherization of single-

family or other high energy-consuming dwelling units;

(iv) The amount of non-Federal resources to be applied to the program;

(v) The amount of Federal resources, other than DOE weatherization grant funds, to be applied to the program;

(vi) The amount of weatherization grant funds allocated to the State under this part;

(vii) The expected average cost per dwelling to be weatherized, taking into account the total number of dwellings to be weatherized and the total amount of funds, Federal and non-Federal, expected to be applied to the program;

(viii) The average amount of the DOE funds specified in § 440.18(c)(1) through (9) to be applied to any dwelling unit;

(ix) The average amount of DOE funds applied to any dwelling unit for weatherization materials as specified in § 440.18(c)(1);

(x) The procedures used by the State for providing additional administrative funds to qualified subgrantees as specified in § 440.18(d);

(xi) Procedures for determining the most cost-effective measures in a dwelling unit;

(xii) The definition of ''low-income'' which the State has chosen for determining eligibility for use statewide in accordance with § 440.22(a);

(xiii) The definition of ''children'' which the State has chosen consistent with § 440.3; and

(xiv) The amount of Federal funds and how they will be used to increase the amount of weatherization assistance that the State obtains from non-Federal sources, including private sources, and the expected leveraging effect to be accomplished.

5. Section 440.15 is amended by revising paragraph (a)(3)(iv) to read as follows:

§ 440.15 Subgrantees.

(a) * * *

(3) * * *

(iv) The ability of the subgrantee to secure volunteers, training participants, public service employment workers, and other Federal or State training programs.

* * * * *

6. Section 440.16 is amended by revising paragraphs (b) and (d) to read as follows:

§ 440.16 Minimum program requirements.

* * * * *

(b) Priority is given to identifying and providing weatherization assistance to:

(1) Elderly persons;

(2) Persons with disabilities;

(3) Families with children;

(4) High residential energy users; and

(5) Households with a high energy burden.

* * * * *

(d) To the maximum extent practicable, the grantee will secure the services of volunteers when such personnel are generally available, training participants and public service employment workers, other Federal or State training program workers, to work under the supervision of qualified supervisors and foremen;

* * * * *

7. In § 440.17 paragraph (a) introductory text is revised and paragraphs (b) and (c) are added to read as follows:

§ 440.17 Policy advisory council.

(a) Prior to the expenditure of any grant funds, a State policy advisory council, or a State commission or council which serves the same functions as a State policy advisory council, must be established by a State or by the Regional Office Director if a State does not participate in the Program which:

* * * * *

(b) Any person employed in any State Weatherization Program may also be a member of an existing commission or council, but must abstain from reviewing and approving activities associated with the DOE Weatherization Assistance Program.

(c) States which opt to utilize an existing commission or council must certify to DOE, as a part of the annual application, of the council's or commission's independence in reviewing and approving activities associated with the DOE Weatherization Assistance Program.

8. Section 440.18 is amended by:

a. Revising paragraph (a);

b. Removing the phrase ''and (c)(15)'' in the introductory text to paragraph (b) and in paragraph (b)(2)(i);

c. Adding paragraph (b)(3);

d. Revising paragraph (c)(6); and

e. Revising ''September 30, 1985'' to read ''September 30, 1993'' in paragraph (e)(2)(iii).

The revisions and addition read as follows:

§ 440.18 Allowable expenditures.

(a) States must spend an average of at least 40 percent of the funds provided them for weatherization materials, labor and related matters listed in paragraphs (c)(1) through (9) of this section. DOE may approve a State's application to waive the 40 percent requirement under § 440.21.

* * * * *

(b) * * *

(3) For the purposes of determining the average cost per dwelling limitation, costs for the purchase of vehicles or other certain types of equipment as defined in 10 CFR part 600 may be amortized over the useful life of the vehicle or equipment.

* * * * *

(c) * * *

(6) The cost of purchasing vehicles, except that any purchase of vehicles must be referred to DOE for prior approval in every instance.

* * * * *

9. Section 440.19 is revised to read as follows:

§ 440.19 Labor.

Payments for labor costs under § 440.18(c)(2) must consist of:

(a) Payments permitted by the Department of Labor to supplement wages paid to training participants, public service employment workers, or other Federal or State training programs; and

(b) Payments to employ labor or to engage a contractor (particularly a nonprofit organization or a business owned by disadvantaged individuals which performs weatherization services), provided a grantee has determined an adequate number of volunteers, training participants, public service employment workers, or other Federal or State training programs are not available to weatherize dwelling units for a subgrantee under the supervision of qualified supervisors.

10. Section 440.21 is revised to read as follows:

§ 440.21 Weatherization materials standards and energy audit procedures.

(a) Paragraph (b) of this section describes the required standards for weatherization materials. Paragraphs (c) and (d) of this section describe the cost-effectiveness tests that weatherization materials must pass before they may be installed in an eligible dwelling unit. Paragraph (e) of this section lists the other energy audit requirements that do not pertain to cost-effectiveness tests of weatherization materials. Paragraphs (f) and (g) of this section describe the use of priority lists and presumptively cost-effective general heat waste reduction materials as part of a State's energy audit procedures. Paragraph (h) of this section explains that a State's energy audit procedures and priority lists must be re-approved by DOE every 5 years.

(b) Only weatherization materials which are listed in Appendix A to this part and which meet or exceed standards prescribed in Appendix A to this part may be purchased with funds

provided under this part. However, DOE may approve an unlisted material upon application from any State.

(c) Except for materials to eliminate health and safety hazards allowable under § 440.18(c)(15), each individual weatherization material and package of weatherization materials installed in an eligible dwelling unit must be cost-effective. These materials must result in energy cost savings over the lifetime of the measure(s), discounted to present value, that equal or exceed the cost of materials, installation, and on-site supervisory personnel as defined by the Department. States have the option of requiring additional related costs to be included in the determination of cost-effectiveness. The cost of incidental repairs must be included in the cost of the package of measures installed in a dwelling.

(d) The energy audit procedures must assign priorities among individual weatherization materials in descending order of their cost-effectiveness according to paragraph (c) of this section after:

(1) Adjusting for interaction between architectural and mechanical weatherization materials by using generally accepted engineering methods to decrease the estimated fuel cost savings for a lower priority weatherization material in light of fuel cost savings for a related higher priority weatherization material; and

(2) Eliminating any weatherization materials that are no longer cost-effective, as adjusted under paragraph (d)(1) of this section.

(e) The energy audit procedures also must—

(1) Compute the cost of fuel saved per year by taking into account the climatic data of the area where the dwelling unit is located, where the base temperature that determines the number of heating or cooling degree days (if used) reasonably approximates conditions when operation of heating and cooling equipment is required to maintain comfort, and must otherwise use reasonable energy estimating methods and assumptions;

(2) Determine existing energy use and energy requirements of the dwelling unit from actual energy bills or by generally accepted engineering calculations;

(3) Address significant heating and cooling needs;

(4) Make provision for the use of advanced diagnostic and assessment techniques which DOE has determined are consistent with sound engineering practices;

(5) Identify health and safety hazards to be abated with DOE funds in compliance with the State's DOE-approved health and safety procedures under § 440.16(h);

(6) Treat the dwelling unit as a whole system by examining its heating and cooling system, its air exchange system, and its occupants' living habits and needs, and making necessary adjustments to the priority of weatherization materials with adequate documentation of the reasons for such an adjustment; and

(7) Be specifically approved by DOE for use on each major dwelling type that represents a significant portion of the State's weatherization program in light of the varying energy audit requirements of different dwelling types including single-family dwellings, multi-family buildings, and mobile homes.

(f) For similar dwelling units without unusual energy-consuming characteristics, energy audits may be accomplished by using a priority list developed by conducting, in compliance with paragraphs (b) through (e) of this section, site-specific energy audits of a representative subset of these dwelling units. For DOE approval, States must describe how the priority list was developed, how the subset of similar homes was determined, and circumstances that will require site-specific audits rather than the use of the priority lists. States also must provide the input data and list of weatherization measures recommended by the energy audit software or manual methods for several dwelling units from the subset of similar units.

(g) States may use, as a part of an energy audit, general heat waste reduction weatherization materials that DOE has determined to be generally cost-effective. States may request approval to use general heat waste materials not listed in DOE policy guidance by providing documentation of their cost-effectiveness and a description of the circumstances under which such materials will be used.

(h) States must resubmit their energy audit procedures (and priority lists, if applicable, under certain conditions) to DOE for approval every five years. States must also resubmit to DOE, for approval every five years, their list of general heat waste materials in addition to those approved by DOE in policy guidance, if applicable. Policy guidance will describe the information States must submit to DOE and the circumstances that reduce or increase documentation requirements.

11. Section 440.22 is amended by revising paragraph (b)(2) introductory text to read as follows:

§ 440.22 Eligible dwelling units.

* * * * *

(b) * * *

(2) Not less than 66 percent (50 percent for duplexes and four-unit buildings, and certain eligible types of large multi-family buildings) of the dwelling units in the building:

* * * * *

[FR Doc. 00–31158 Filed 12–7–00; 8:45 am]

BILLING CODE 6450–01–P

Federal Register

Friday,
December 8, 2000

Part VI

Department of Commerce

National Oceanic and Atmospheric Administration

Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve; Request for Comments on the President's Conservation Measures and Proposal to Make Permanent the Reserve Preservation Areas; and Call for Applications for Representatives to the Coral Reef Ecosystem Council; Notices

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Request for Comments on the President's Conservation Measures and Proposal To Make Permanent the Reserve Preservation Areas in the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

AGENCY: National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Request for comments; notice of public hearings.

SUMMARY: On December 4, 2000, President William Jefferson Clinton signed Executive Order 13178 establishing the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve), pursuant to the National Marine Sanctuaries Amendments Act of 2000 (Act). As part of the establishment of the Reserve, the President established certain conservation measures that restrict activities throughout the Reserve and created Reserve Preservation Areas around various islands and banks within the Reserve where consumptive or extractive uses are prohibited except as otherwise specified in the Executive Order. Under the Act, closure areas may become permanent after adequate public review and comment. Through this notice, the President is seeking public comment on making the Reserve Preservation Areas permanent. The President is also seeking public comment on the conservation measures established for the Reserve. These measures are to provide strong and lasting protection for the coral reef ecosystem and related marine resources and species of the Reserve (Reserve resources). The public may submit written comments to the Secretary of Commerce on the President's behalf. The President has also directed the Secretary to hold seven (7) public hearings to accept written and oral comments on his behalf.

DATES: Comments will be considered if postmarked no later than January 8, 2001.

ADDRESSES: Comments may be mailed to Roger Griffis, NOAA, Office of Policy and Strategic Planning, Room 6117, 14th & Constitution Ave NW, Washington, D.C. 20230–0001 or faxed to (301) 713–4306. Comments can also be submitted electronically via the website at hawaiireef.noaa.gov, or by email to *hawaiicomments@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: For further information, or to request an information packet on the President's proposal, please contact Roger Griffis at (866) 616–3605, or visit the web site at hawaiireef.noaa.gov

SUPPLEMENTARY INFORMATION:

On December 4, 2000 President William Jefferson Clinton signed Executive Order 13178 establishing the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, pursuant to section 6 of the National Marine Sanctuaries Amendments Act of 2000 (Act), Pub. L. 106–513 (11/13/00). The Reserve encompasses an area of the marine waters and submerged lands of the Northwestern Hawaiian Islands extending approximately 1200 nautical miles long and 100 nautical miles wide. The Reserve is adjacent to and seaward of the boundary of Hawaii State waters and submerged lands and the Midway Atoll National Wildlife Refuge, and includes the Hawaiian Islands National Wildlife Refuge to the extent it extends beyond Hawaii State waters and submerged lands. The Reserve will be managed by the Secretary of Commerce, or his or her designee (hereafter ''Secretary'') under the National Marine Sanctuaries Act and the Executive Order. The Secretary will also initiate the process to designate the Reserve as a National Marine Sanctuary. The management principles and implementation strategy and requirements for the Reserve are found in the Executive Order that is part of the information package that may be obtained at the address above, or can be found on the web site listed above.

Conservation Measures

The Executive Order contains the following conservation measures that apply throughout the Reserve.

Commercial Fishing. The order provides that all currently existing commercial federal fishing permits and current levels of fishing effort and take, as determined by the Secretary and pursuant to regulations in effect on the date of this order shall be capped as follows:

- No commercial fishing may occur in Reserve Preservation Areas, except as expressly allowed in the Executive Order;
- There shall be no increase in the number of permits of any particular type of fishing (such as for bottomfishing) beyond the number of permits of that type in effect the year preceding the date of the Executive Order;
- The level of aggregate take under all permits of any particular type of fishing may not exceed the aggregate level of take under all permits of that type of fishing over the year preceding the date of this order, as determined by the Secretary, provided that the Secretary shall equitably divide the aggregate level into individual levels per permit, and further provided that the Secretary may make a one-time reasonable increase to the total aggregate to allow for the use of two Native Hawaiian bottomfishing permits;
- There shall be no permits issued for any particular type of fishing for which there were no permits issued in the year preceding the date of the Executive Order;
- The type of fishing gear used by any permit holder may not be changed except as provided below.

Recreational Fishing—All currently existing (preceding the date of the Executive Order) levels of recreational fishing effort, as determined by the Secretary and pursuant to regulations in effect on the day of this order, shall be capped (*i.e.,* no increase of take levels or levels of fishing effort, species targeted, or change in gear types) throughout the Reserve. However, fishing is further restricted in Reserve Preservation Areas.

The Secretary, after consultation with the Secretary of the Interior and Governor of the State of Hawaii, and after public review and comment and consideration of any advice or recommendations of the Reserve Council and Western Pacific Regional Fishery Management Council, may further restrict fishing activities if necessary to protect Reserve resources, or may authorize or require alternate gear types if such gear would offer equal or greater protection for Reserve resources.

In addition to the conservation measures described above, the following activities are prohibited throughout the Reserve:

(1) Exploring for, developing, or producing oil, gas or minerals;

(2) Having a vessel anchored on any living or dead coral with an anchor, anchor chain, or anchor line/rope when visibility is such that the seabed can be seen;

(3) Drilling into, dredging or otherwise altering the seabed; or constructing, placing or abandoning any structure, material or other matter on the seabed, except as an incidental result of anchoring vessels;

(4) Discharging or depositing any material or other matter into the Reserve, or discharging or depositing any material or other matter outside the Reserve that subsequently enters the Reserve and injures any resource of the Reserve, except fish parts (i.e., chumming material or bait) used in and during authorized fishing operations, or discharges incidental to vessel use such as deck wash, approved marine

sanitation device effluent, cooling water and engine exhaust; and

(5) Removing, moving, taking, harvesting, or damaging any living or non-living Reserve resource, except as described above, in certain Reserve Preservation Areas, and for Native Hawaiian non-commercial subsistence, cultural or religious uses as described below.

The Executive Order provides that the Secretary may conduct, or authorize by permit, activities listed in paragraphs (3)–(5) above necessary for research, monitoring, education, or management activities that further the Management Principles of the Executive Order.

Reserve Preservation Areas

In addition to the Reserve-wide conservation measures, the Executive Order establishes fifteen (15) Reserve Preservation Areas where all consumptive activities are prohibited except as expressly provided in the Executive Order. These areas provide a greater level of protection to the coral reef ecosystem resources in certain areas in the Reserve. The President has proposed to make these Reserve Preservation Areas permanent. The Executive Order establishes the Reserve Preservation Areas as follows:

1. From the seaward boundary of Hawaii State waters and submerged lands to a mean depth of 100 fathoms around—

A. Nihoa Island, *provided that* bottomfishing in accordance with the conservation measures described above shall be allowed to continue seaward of a mean depth of 10 fathoms, unless and until the Secretary determines otherwise after adequate public review and comment;

B. Necker Island, *provided that* bottomfishing in accordance with the conservation measures described above shall be allowed to continue seaward of a mean depth of 20 fathoms, unless and until the Secretary determines otherwise after adequate public review and comment;

C. French Frigate Shoals;

D. Gardner Pinnacles, *provided that* bottomfishing in accordance with the conservation measures described above shall be allowed to continue seaward of a mean depth of 10 fathoms, unless and until the Secretary determines otherwise after adequate public review and comment;

E. Maro Reef, *provided that* bottomfishing in accordance with the conservation measures described above shall be allowed to continue seaward of a mean depth of 20 fathoms, unless and until the Secretary determines otherwise after adequate public review and comment;

F. Laysan Island, *provided that* bottomfishing in accordance with the conservation measures described above shall be allowed to continue seaward of a mean depth of 50 fathoms, unless and until the Secretary determines otherwise after adequate public review and comment;

G. Lisianski Island, *provided that* bottomfishing in accordance with the conservation measures described above shall be allowed to continue seaward of a mean depth of 50 fathoms, unless and until the Secretary determines otherwise after adequate public review and comment;

H. Pearl and Hermes Atoll; and

I. Kure Island.

2. 12 nautical miles around the approximate geographical centers of—

A. The first bank immediately east of French Frigate Shoals;

B. Southeast Brooks Bank, which is the first bank immediately west of French Frigate Shoals, provided that the closure area shall not be closer than approximately 3 nautical miles of the next bank immediately west;

C. St. Rogatien Bank, provided that the closure area shall not be closer than approximately 3 nautical miles of the next bank immediately east, *provided further that* bottomfishing in accordance with the conservation measures described above shall be allowed to continue, unless and until the Secretary determines otherwise after adequate public review and comment;

D. The first bank west of St. Rogatien Bank, east of Gardner Pinnacles;

E. Raita Bank; and

F. Pioneer Bank, *provided that* bottomfishing in accordance with the conservation measures described above shall be allowed to continue, unless and until the Secretary determines otherwise after adequate public review and comment.

In addition to the conservation measures (described above) that apply throughout the Reserve, the Executive Order provides that the following activities are prohibited within the Reserve Preservation Areas.

(1) Commercial and recreational fishing (except existing bottomfishing where expressly allowed in the Executive Order as indicated above);

(2) Anchoring in any area that contains available mooring buoys, or anchoring outside an available anchoring area when such area has been designated by the Secretary;

(3) Any type of touching or taking of living or dead coral;

(4) Discharging or depositing any material or other matter except cooling water or engine exhaust; and

(5) Such other activities the Secretary identifies after adequate public review and comment, and after consideration of any advice and recommendations of the Reserve Council.

The Executive Order provides that the Secretary may conduct, or authorize by permit, research, monitoring, education or management activities within any Reserve Preservation Area that further the Management Principles of section 4 of the Executive Order.

The Executive Order provides that Native Hawaiian non-commercial subsistence, cultural, or religious uses may continue, to the extent consistent with existing law, within the Reserve and Reserve Preservation Areas. The Secretary shall work with Native Hawaiian interests to identify those areas where such Native Hawaiian uses of the Reserve's resources may be conducted without injury to the Reserve's coral reef ecosystem and related marine resources and species, and may revise the areas where such activities may occur after public review and comment and consideration of any advice and recommendations of the Reserve Council.

The Executive Order provides that the Reserve Preservation Areas are approximated using fathoms, but the Secretary will develop straight-line boundaries in longitude and latitude coordinates to clearly encompass each Reserve Preservation Area and to provide clarity and ease of identification. The Secretary may make technical modifications to any such boundaries.

The following are individual descriptions of the Reserve Preservation Areas and the resources that are protected within each area.

NIHOA Island Reserve Preservation Area

Nihoa Island, also known as Bird Island, lies 130 miles (245 km) northwest of Nihau. With about 170 acres of land, it is the largest volcanic island in the northwestern chain. The island is characterized by steep slopes and sheer sea cliffs, which are clearly visible from a distance. Nihoa's submerged coral reef habitat totals approximately 142,000 acres and is the remnant of a former volcanic cone. The

northern edge of the reef is a steep cliff made up of successive layers of lava through which numerous volcanic extrusions (dikes) are visible.

Nihoa supports coral communities with very limited total habitat, most of which is not protected from the heavy and chronic wave action that strikes this small island from all directions. These habitats consist of the submerged portions of sea cliffs close to shore, caves & lava tubes, ledges, overhangs, basalt pinnacles, boulders, cobbles, sand deposits, basalt benches & slopes, trenches and shelves. All of these features have been shaped by and are constantly eroded by the pounding waves. The rigorous environment and isolated nature of Nihoa has limited the number of corals that have successfully colonized the shallow habitats encircling the island. Due to the scouring effects of sand and turbulent waves, most of the 20 species of corals only survive at depths greater than 30 feet and nowhere is coral cover greater than 25%.

Although corals are not abundant in the shallow waters around Nihoa, reef fish sharks, jacks, monks seals and other predators are common to the island. Due to a limited number of habitat types, however, species diversity of reef fishes is low when compared to other atolls and islands in the NWHI chain. Although Nihoa was inhabited during the 16th century, human disturbances have been minimal in the nearshore waters around the island in recent times.

The Hawaiian Islands National Wildlife Refuge is currently administered out to 10 fathoms at Nihoa Island.

Necker Island Reserve Preservation Area

Necker Island is a hook-shaped dry volcanic island that includes about 45 acres of land. More than 380,000 acres of coral reef habitat are associated with the island.

With regard to reef and coral development, Necker Island resembles Nihoa Island in several respects. Necker is a small island unable to buffer the impacts of strong waves that can break along the submerged shorelines from any direction. The effects of scour (surge combined with sand and other sediments) is evident from the wave-cut bench in West Cove and the deeply cut sand channels and chasms at several locations in deeper water. The concentration of living corals on elevated surfaces is a manifestation of corals surviving better in less scour-prone environments.

Although Necker is smaller than Nihoa, deeper coral reef shelf habitat surrounding Necker is more extensive. A broad shelf extends around the island, especially to the southeast, but is not shallow enough to protect the island from wave action. Nevertheless, the number of coral species at Necker is comparable to that of Nihoa (fewer than 20) and reflects the difficulty of corals colonizing and establishing permanent communities in shallow water. Reef growth, if any, around either island is minimal and both islands have experienced the punishing effects of large waves as demonstrated by the high wave cut sea cliffs above sea level and wave planed benches and shelves below sea level. With the exception of small amounts of fishing line, there is little evidence of any human effects on the reef environments of Necker Island.

Reef fishes at Necker appear healthy and abundant. Numerous grey reef sharks, giant Trevally jacks, gray snappers, monk seals and other predators have been sighted suggesting a good natural balance of the reef fish population. Several large manta rays have also been observed along with an abundance of limpets along the island's rocky surf zone.

The Hawaiian Islands National Wildlife Refuge is currently administered out to 20 fathoms at Necker Island.

French Frigate Shoals Reserve Preservation Area

French Frigate Shoals (FFS) is an 18 mile (34 km) wide, crescent-shaped atoll. It is approximately 1,330 km northwest of Honolulu and approximately 1,300 km southeast of Kure Atoll. The Shoals' lagoon contains two exposed volcanic rocks and 12 low sandy islets. About 67 acres of land and 230,000 acres of coral reef habitat are associated with FFS which makes it the largest atoll in the Northwestern Hawaiian Islands.

The substrates of the atoll are predominantly reef carbonates and provides for abundant coral reef habitats such as deep ocean reef slopes, ocean reef terraces, spurs and grooves and shallow perimeter reef flats.

The Shoals' semi-enclosed lagoon affords corals protection from the destructive effects of storms and waves and provides many other important reef habitats missing from exposed ocean reef environments. Dominated by algae, rubble and sand deposits, the lagoon also contains numerous pinnacles, mounds, and platforms.

Recent surveys have shown that wave action, large ocean swells and periodic storms often impact FFS coral development and tend to control extensive reef growth. Yet, due to the complexity and quantity of its habitats, coral diversity and abundance is spectacular at the atoll. The best coral development occurs near the lagoon ends of the reef where exposure to waves and storms is reduced and where the influx of clean ocean water promotes habitat diversity and good water quality. Poorer reef habitats were concentrated in the shallow eastern lagoon, which is dominated by shallow sediment deposits, strong currents, high turbidity, and poor water quality.

Because FFS is close to Johnston Atoll, where table coral species are abundant, it may be serving as the ''stepping stone'' for the recruitment of table corals (*Acropora*) in the Hawaiian Islands. Although in lesser abundance, four other islands near FFS (Necker Island, Gardner Pinnacles, Maro Reef, and Laysan Island) also support *Acropora.* FFS may be responsible for the distribution table coral as far as Kauai as well, where populations of *Acropora,* have also been recently reported.

Derelict fishing gear and other types of marine debris are, however, having a major impact on the reefs and associated fauna of the atoll, notably monk seals. Over the past several years, efforts have been undertaken to lessen the threat of this growing problem.

The Hawaiian Islands National Wildlife Refuge is currently administered out to 10 fathoms at French Frigate Shoals.

Gardner Pinnacles Reserve Preservation Area

Gardner Pinnacles consists of two volcanic peaks and spans 5 acres in total. The peaks frosted appearance indicates their importance as a roosting site and breeding habitat for 12 species of tropical seabirds. About 600,000 acres of coral reef habitat surround the pinnacles and consists mostly of relatively flat banks in the 15 to 20 fathom (30 to 40 meter) depth range. Very little survey work has been conducted over the banks surrounding Gardner, but the few observations that have been made suggest a mostly sand and algal bottom with occasional rock outcroppings.

The ocean environment at Gardner Pinnacles is turbulent most of the time and the two small islands do not offer much protection from the area's heavy waves and currents. Coral at the Pinnacles is more abundant on elevated surfaces and behind rises or mounds that are protected from wave action. The high diversity of corals reflects the variety of habitats at the Pinnacles, while its low abundance reflects the wave and scour-controlled nature of the

environment. The lack of shallow water environments around the Pinnacles limits the number of reef building species that can survive the conditions at the reefs and powerful wave action reduces the growth rate of corals, coralline algae, and other reef-building organisms.

Based on occasional visual observations and satellite tag tracking data, it is known that a few monk seals haul out on Gardner's rock ledges and forage over the surrounding banks.

The Hawaiian Islands National Wildlife Refuge is currently administered out to 10 fathoms at Gardner Pinnacles.

Maro Reef Reserve Preservation Area

Maro Reef is a largely submerged atoll, with no more than 1 acre of emergent land but about 475,000 acres of underwater coral reef habitat. Except for birds, there are no terrestrial species inhabiting the island.

Maro Reef consists of numerous coral heads and rocks amid sandy flats and channels at depths of 1 to 10 fathoms. Extensive surveys and ecological assessments conducted from the NOAA ship *Townsend Cromwell* in 2000 revealed a unique and complex reef consisting of intertwined reef spurs radiating outward from a series of lagoons. Maro's corals and coralline algae are healthy, diverse, and contribute to active reef growth on all of the island's outer barrier reefs. The coral structures of the outer barriers have much higher vertical relief than observed at French Frigate Shoals or any other NWHI atolls with coral heads. This amazing feature, along with the reef's healthy coral and algal cover and excellent visibility make the outer barriers of Maro among the more beautiful regions of the NWHI Reserve.

The series of central lagoons are noticeably different from all other lagoons surveyed at the NWHI. Tall columns of coral covered with algal turf rise from about 20 meters below sea level to about 5 meters from the water's surface. Lagoon bottoms are generally highly silty and sandy.

The deeper banks (10 to 20 fathoms, 20 to 40 meters) surrounding the shallow water reefs have also undergone extensive surveys. Like Necker Island and the Gardner Pinnacles, these relatively flat areas consist primarily of sand and algal beds with occasional rock outcroppings.

Maro Reef provides very few areas for monk seals to haul out and therefore is not considered a breeding area for the species. Monk seals are, however, occasionally seen foraging around the reef. Derelict fishing gear and other types of marine debris are, however, having a major impact on the shallow reefs and associated fauna of Maro Reef.

Laysan Island Reserve Preservation Area

Laysan Island, located approximately 1,418 km northwest of Honolulu, is the largest island in the Reserve with about 1,000 acres of land. Laysan is roughly rectangular in shape and about 3.6 sq. km in area with a large saltwater lagoon occupying about one-fifth of the island's central depression. It is well vegetated (except for its sand dunes) and contains a hyper-saline lake, which is one of only five natural lakes in the State of Hawaii.

Laysan's coral reef habitat totals approximately 145,000 acres. The fringing reef surrounding the island varies from 100 to 500 m in width and is most extensive at the northwest end of the island. Inside the reef is a narrow, shallow channel which nearly encircles the island except for the south and southeast sides.

Despite lacking much protection from the detrimental effects of waves, Laysan supports a surprisingly rich coral environment with good development along its leeward coasts. The small back reef, pass and moat near the island's western boat landing also help to diversify habitats and the number of coral species inhabiting them. Today, coral and reef growth appear to be healthy. Of interest is the fact that the table coral Acropora can be found off Laysan, which makes it the northernmost island or atoll in the Northwestern Hawaiian Islands chain that supports this particular species.

Laysan Island is one of the endangered monk seal's primary breeding sites. It also supports a very healthy reef fish abundance and diversity. Derelict fishing gear and other types of marine debris are, however, having a major impact on the reefs and associated fauna of the island. Over several years, efforts have been undertaken to lessen the threat of this growing problem.

The Hawaiian Islands National Wildlife Refuge is currently administered out to 10 fathoms at Laysan Island.

Lisianski Island Reserve Preservation Area

Lisianski Island is a low sand and coral island with about 400 acres of land. It lies at the northern end of Neva Shoals, a large reef bank spanning about 65 square miles and totaling about 310,000 acres.

Lisianski Island is a low sand and coral island with about 400 acres of land. It lies at the northern end of Neva Shoals, a large reef bank spanning about 65 square miles and totaling about 310,000 acres.

The island is ringed mostly by sandy and sand-coral beaches with the exception of the eastern side which is dominated by an exposed ledge of reef rock and small tidal pools. A small cove present near the middle of the west beach is designated as a small boat landing on hydrographic charts. West of this landing, there are large numbers of coral heads in the lagoon, which has low visibility and a highly silty bottom.

Reef fish diversity and abundance at Lisianski appear healthy and robust as indicated by high numbers of Trevally jacks and other large marine predators. Interestingly, in a recent survey of the island it was noted that the jacks were particularly aggressive towards divers and small boats, a phenomenon that was not experienced at any of the other islands and atolls in the Reserve.

Green sea turtles can also be found on Lisianski Island as well as Hawaiian monk seals, which use the island's beaches as haul out grounds.

The Hawaiian Islands National Wildlife Refuge is currently administered out to 10 fathoms at Lisianski Island.

Pearl and Hermes Atoll Reserve Preservation Area

Pearl and Hermes Atoll is a large, low atoll with several small islets forming about 80 acres of land and almost 200,000 acres of coral reef habitat. It is approximately 2,090 km northwest of Honolulu and 140 km east-southeast of Midway Atoll. The fringing reef is roughly 69 km in circumference and open to the west. The islets are periodically washed over when winter storms pass through.

The lagoon of the atoll is large and it is difficult to draw generalizations regarding the abundance and distribution of corals and reefs. Many areas of the shallow lagoon reef holes appear to be dominated by sediments while water circulation and exchange rates may be a factor in dictating coral development. Where circulation is sluggish, water temperatures rise during sunlit hours and may be unfavorable to corals. In contrast, where there is good mixing within pockets of the lagoon, either from tidal exchange or wave set up along the windward reefs, there are more favorable conditions for corals. Pinnacle reefs are exposed to the best of two worlds: better access to ocean water exchange and protection from the damaging effects of storms and large waves. At Pearl and Hermes, the pinnacle reefs show both high coral cover and diversity.

Healthy spur-and-groove development along more exposed reefs is evidence that the atoll is growing. The spur and groove habitat of the north and northwest outer barrier reefs is unique among NWHI atolls in that it contains extremely deep and narrow canyons. Some semi-protected southern-facing reefs of the atoll did not display-spur and-grooves and may be growing at slower rates or not at all. The outer reef slopes of the south shore contain numerous large holes and caves, which contribute to spectacular abundance and diversity of fish at the atoll.

Pearl and Hermes has a moderately diverse assemblage of coral species, although not as high as reported for the other large atoll French Frigate Shoals. This may be attributed to the lack of table coral (*Acropora*) at Pearl and Hermes and up to six or more species being present at French Frigate Shoals.

Derelict fishing gear and other types of marine debris are, however, having a major impact on the reefs and associated fauna of the atoll. Over the past three years, efforts have been undertaken to lessen the threat of this growing problem.

The Hawaiian Islands National Wildlife Refuge is currently administered out to 10 fathoms at Pearl and Hermes Atoll.

Kure Island Reserve Preservation Area

Kure Island is the northernmost coral atoll in the world. The atoll is nearly circular with a 6-mile (10 km) diameter, enclosing about 200 acres of emergent land. The outer reef almost completely encircles the atoll's lagoon except for passages to the southwest. The only permanent land in the atoll is crescent-shaped Green Island, located near the fringing reef in the southeastern part of the lagoon. Almost 80,000 acres of coral reef habitat are found at Kure.

Kure is a healthy growing atoll with diverse and abundant coral assemblages. Virtually all spur-and-groove formations are robust and healthy. At the north and northwest outer barrier reefs, the spur-and-groove habitat is widely separated and looks like rolling hills when compared to the steep canyons of Pearl and Hermes Atoll. Some of Kure's lagoon reefs display exceptional coral development. Back reef environments also appear to support diverse and vigorous coral growth and provide strong evidence that the hard reef is growing.

Whereas coral cover is generally low, the atoll's coral diversity is as high as any other site except French Frigate Shoals. The combination of temperature, light constraints and water conditions at Kure all contribute to a flourishing reef environment and, like Midway and Pearl & Hermes Atolls, Kure is situated far enough north that it receives increased amounts of nutrients as the subtropical front migrates south during the winter.

Kure supports unique fish and dolphin populations while nurturing monk seals with the many lobsters that occupy the well-circulated lagoon.

Derelict fishing gear and other types of marine debris are, however, having a major impact on the reefs and associated fauna of the atoll. Over the past year, efforts have been undertaken to lessen the threat of this growing problem.

''The Banks'' Reserve Preservation Areas

The NWHI area contains several seamounts that are commonly referred to as ''the Banks.'' For present purposes, the Banks consist of Raita Bank; St. Rogatien Bank; the first bank west of St. Rogatien Bank and east of Gardner Pinnacles (Bank Number 7, which remains unnamed); Pioneer Bank; Southeast Brooks Bank, which is the first bank immediately west of French Frigate Shoals; and the first bank immediately east of French Frigate Shoals.

On Raita Bank the approximate minimum depth is 9 fathoms (18 meters). It is oval shaped and extends approximately 20 km NE-SW and 10 km NW-SE. The bank west of St. Rogatien lies at about 30 fathoms (60 meters) and is approximately 5 km in diameter. Pioneer Bank is another oval seamount that sits at about 17 fathoms (34 meters) and extends 20 km E-W and 11 km N-S. At St. Rogatien Bank, the top of the seamount is covered by about 12 fathoms (24 meters) of water. It too is a large oval seamount and extends approximately 7 km E-W and 10 km N-S.

In general, all of the banks have very rough bottoms with numerous outcroppings, protuberances and rock areas. Endangered Hawaiian monk seals have been observed to forage in the areas around the banks, probably traveling from breeding populations at French Frigate Shoals.

The Executive Order provides that, consistent with applicable law, nothing in the Executive Order is intended to apply to military activities (to include the U.S. Coast Guard), including military exercise conducted within or in the vicinity of the Reserve, consistent with the requirements of Executive Orders 13089 (June 11, 1998), and 13158 (May 26, 2000). Further, nothing in the Executive Order is intended to restrict the Department of Defense from conducting activities necessary during time of war or national emergency, or when necessary for reasons of national security, consistent with applicable laws. In addition, consistent with applicable law, nothing in the Executive Order shall limit agency actions to respond to emergencies posing an unacceptable threat to human healthy and safety or to the marine environment and admitting of no other feasible solution.

Nothing in the Executive Order is intended to limit the authority of the U.S. Coast Guard to enforce any federal law, or install and maintain aids to navigation. Management of the Reserve shall be in accordance with generally recognized principles of international law, and in accordance with the treaties, conventions, and other agreements to which the United States is a party.

Public Comment

Through increased measures of protection, the conservation measures and Reserve Preservation Areas will provide lasting protection for the Reserve resources. The Act provides that no closure areas around the Northwestern Hawaiian Islands shall become permanent without adequate review and comment. Accordingly, the President is requesting public comment on the Reserve Preservation Areas and his proposal to make them permanent. The President is also requesting public comment on the conservation measures for the Reserve. The comment period for this proposal closes on January 8, 2001. NOAA is receiving the comments on behalf of the President. Comments may be sent, emailed or faxed to the location provided above. The Secretary will also host, on behalf of the President, seven public hearings, six in Hawaii and one in Washington D.C., to accept oral and written comments on the President's proposal. The dates, locations and times of these meetings are as follows.

Oahu

December 11, 6 p.m., Ala Moana Hotel B Garden Lanai, 410 Atkinson Drive, Honolulu, HI, Phone: 808–955–4811.

Kona

December 11, 6 p.m., King Kamehameha Hotel, 75–5660 Palani Road, Kailua-Kona, HI, Phone: 808–329–2911.

Hilo

December 12, 6 p.m., Hilo Cooperative Extension Service, 875 Komohana Street, Conference Room A, Hilo, HI, Phone: 808–959–9155.

Kauai

December 13, 6 p.m., Kauai War Memorial Convention Hall, Ballroom B, 4191 Hardy Street, Lihue, HI.

Washington, D.C.

December 13, 1 p.m., U.S. Department of Commerce, Room 4830, 14th &

Constitution Avenue NW, Phone: 202–482–5181.

Maui

December 14, 6 p.m., Wailuku Community Center, 395 Waena Street, Wailuk, HI.

Molokai

December 15, 6 p.m., Mitchell Pauole Center, 90 Ainoa Street, Kaunakakai, HI, Phone: 808–553–3204.

Authority: Pub. L. 106–513; 16 U.S.C. Section 1431 *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

D. James Baker,

Under Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration.

[FR Doc. 00–31167 Filed 12–6–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Call for Applications for Representatives to the Coral Reef Ecosystem Reserve Council for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: On December 4, 2000, President William Jefferson Clinton signed Executive Order 13178 establishing the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve (Reserve). The President's Executive Order requires the Secretary of Commerce or his or her designee (hereafter ''Secretary'') to establish a Coral Reef Ecosystem Reserve Council (Reserve Council) to provide advice and recommendations on the development of the Reserve Operations Plan and the designation and management of a Northwestern Hawaiian Islands National Marine Sanctuary by the Secretary. The Secretary, through the National Marine Sanctuary Program (NMSP), is seeking applicants for membership on the Reserve Council.

DATES: Completed applications must be postmarked no later than December 29, 2000.

ADDRESSES: Application kits may be obtained from Elizabeth Moore, National Marine Sanctuary System, 1305 East West Highway, N/ORM6, Room 11642, Silver Spring, Maryland, 20910, or online at: http://hawaiireef.noaa.gov.

Completed applications should be sent to the same address as above.

FOR FURTHER INFORMATION CONTACT: Elizabeth Moore at (301) 713–3125 x170, or hawaiicouncil@noaa.gov, or visit the web site at: http://hawaiireef.noaa.gov.

SUPPLEMENTARY INFORMATION: On December 4, 2000, President William Jefferson Clinton signed Executive Order 13178 establishing the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve, pursuant to the National Marine Sanctuaries Amendments Act of 2000. The Reserve encompasses an area of the marine waters and submerged lands of the Northwestern Hawaiian Islands, extending approximately 1200 nautical miles long and 100 nautical miles wide. The Reserve is adjacent to and seaward of the seaward boundary of Hawaii State waters and submerged lands and the Midway Atoll National Wildlife Refuge, and includes the Hawaiian Islands National Wildlife Refuge to the extent it extends beyond Hawaii State waters and submerged lands. The Reserve will be managed by the Secretary of Commerce pursuant to the National Marine Sanctuaries Act and the Executive Order. The Secretary will also initiate the process to designate the Reserve as a National Marine Sanctuary. The management principles and implementation strategy and requirements for the Reserve are found in the Executive Order, which is part of the application kit and can be found on the web site listed above.

In designating the Reserve, President Clinton directed the Secretary of Commerce to establish a Coral Reef Ecosystem Reserve Council, pursuant to section 315 of the National Marine Sanctuaries Act, to provide advice and recommendations on the development of the Reserve Operations Plan and the designation and management of a Northwestern Hawaiian Islands National Marine Sanctuary by the Secretary. The National Marine Sanctuary Program (NMSP) is seeking applicants for the following seats on the Reserve Council:

- Three Native Hawaiian representatives, including one Native Hawaiian elder, with experience or knowledge regarding Native Hawaiian subsistence, cultural, religious, or other activities in the Northwestern Hawaiian Islands.
- Three representatives from the non-Federal science community with experience specific to the Northwestern Hawaiian Islands and with expertise in at least one of the following areas:

A. Marine mammal science

B. Coral reef ecology.

C. Native marine flora and fauna of the Hawaiian Islands.

D. Oceanography.

E. Any other scientific discipline the Secretary determines to be appropriate.

- Three representatives from non-governmental wildlife/marine life, environmental, and/or conservation organizations.
- One representative from the commercial fishing industry that conducts activities in the Northwestern Hawaiian Islands.
- One representative from the recreational fishing industry that conducts activities in the Northwestern Hawaiian Islands.
- One representative from the ocean-related tourism industry.
- One representative from the non-Federal community with experience in education and outreach regarding marine conservation issues.
- One citizen-at-large representative.

The Reserve Council shall also include one representative from the State of Hawaii as appointed by the Governor; the manager of the Hawaiian Islands Humpback Whale National Marine Sanctuary as a non-voting member; and one representative each, as non-voting members, from the Department of the Interior, Department of State, National Marine Fisheries Service, Marine Mammal Commission, U.S. Coast Guard, Department of Defense, National Science Foundation, and the Western Pacific Regional Fishery Management Council. The non-voting representatives will be chosen by the agencies and other entities, respectively. The charter for the Council can be found in the application kit, or on the web site listed above.

Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; and philosophy regarding the conservation and management of marine resources. Applicants who are chosen as members should expect to serve three-year terms, pursuant to the Council's charter. Persons who are interested in applying for membership on the Council may obtain an application from either the person or website identified above. Completed applications must be sent to the address listed above and postmarked no later than December 29, 2000.

Authority: 16 U.S.C. Section 1431 et seq.; Pub. L. 106–513.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

John Oliver,

Chief Financial Officer, National Ocean Service.

[FR Doc. 00–31168 Filed 12–6–00; 8:45 am]

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Federal Register

Friday,
December 8, 2000

Part VII

Department of Housing and Urban Development

24 CFR Parts 5 and 200

Uniform Physical Condition Standards and Physical Inspection Requirements for Certain HUD Housing; Administrative Process for Assessment of Insured and Assisted Properties; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5 and 200

[Docket No. FR–4452–F–02]

RIN 2501–AC45

Uniform Physical Condition Standards and Physical Inspection Requirements for Certain HUD Housing; Administrative Process for Assessment of Insured and Assisted Properties

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule establishes for multifamily housing certain administrative processes by which HUD will notify owners of HUD's assessment of the physical condition of their multifamily housing; the owners, under certain circumstances, will be provided an opportunity to seek technical review of HUD's physical condition assessment of the multifamily housing; and HUD may take action in certain cases where the housing is found not to be in compliance with the physical condition standards. This rule follows publication of a November 26, 1999 proposed rule and takes into consideration public comment received on the proposed rule.

DATES: *Effective Date:* January 8, 2001.

FOR FURTHER INFORMATION CONTACT: For further information about multifamily issues covered by this rule, contact: Kenneth Hannon, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 6274, Washington, DC 20410; telephone (202) 708–0547, ext. 2599 (this is not a toll-free number).

For further information about the scoring methodology or the technical review process, contact: Wanda Funk, Real Estate Assessment Center, Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington, DC, 20024; telephone Technical Assistance Center at 1–888–245–4860 (this is a toll-free number).

For both offices, persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Uniform Physical Conditions Standards and Uniform Physical Inspection Protocol

This final rule follows publication of a November 26, 1999, proposed rule (65 FR 66539) and builds on the rule issued by HUD on September 1, 1998 (63 FR 46566), that established uniform physical condition standards for public housing, and housing that is insured and/or assisted under certain HUD programs (collectively, HUD properties). The September 1, 1998, final rule also established a uniform physical inspection protocol, based on computerized software developed by HUD, that allows HUD to determine compliance with these standards. The uniform physical condition standards are intended to ensure that HUD program participants carry out their legal obligations to maintain HUD properties in a condition that is decent, safe, sanitary and in good repair. The uniform inspection protocol is intended to assure that, to the greatest extent possible, there is uniformity and objectivity in the evaluation of the physical condition of HUD properties.

The preamble to the November 26, 1999, proposed rule provided a detailed overview of HUD's proposal for the administrative process for the assessment of insured and assisted housing, and the basis for HUD's proposal. The preamble to this rule does not repeat that information.

II. Significant Changes Made at This Final Rule Stage

The following highlights significant changes made to the proposed regulations at this final rule stage.

- HUD amends § 5.705 to remove paragraph (b). Paragraph (b) of this section provides that HUD will notify the public when the inspection software for HUD's physical inspection protocols and the accompanying guidebook are issued and available. This section further provides that HUD will publish a notice in the **Federal Register** to inform the public when the software and guidebook are available, and the notice will provide 30 days within which covered entities must prepare to conduct inspections in accordance with part 5, subpart G. The notice described by § 5.705 was published earlier in the **Federal Register**. Since HUD has published the notice in accordance with § 5.705(b), paragraph (b) is no longer relevant and is removed by this rule.
- HUD amends § 200.853, which lists the HUD multifamily programs to which HUD's physical condition standards and physical inspection protocols are applicable. For the Section 241 Program (Section 241 of the National Housing Act—Supplemental Loans for Multifamily Projects), HUD clarifies that Section 241 properties are subject to inspection, except where the primary (first or senior) loan is insured or assisted by HUD under another program listed in § 200.853. Without this clarification, the regulatory language would subject Section 241 properties to two inspections—one inspection under the Section 241 program, and one inspection under another program covered by this subpart.
- HUD amends § 200.855 to add a new paragraph (b) to clarify that for a property with more than one HUD insured loan, only the first mortgage lender is required to conduct the physical inspection. The second mortgage lender, however, must be provided a copy of the physical inspection report by the first mortgage lender.
- HUD also amends § 200.855 to add a new paragraph (c) that specifies when the responsible entity must perform the required physical inspection. For example, all annual inspections must be performed in the following calendar year and no earlier than 9 months and no later than 15 months from the date of the last inspection. Comparable time periods are provided for inspections that must occur every two years and those that must occur every three years.

This new paragraph (c) also provides that a newly endorsed multifamily property will receive its first physical inspection no earlier than 21 months but not later than 27 months from the date of final endorsement, but in no event shall the inspection be performed after the end of the calendar year following the two year anniversary date of final endorsement.

HUD is aware that linking the timing of the inspection to the calendar year may constrain the flexibility to schedule some inspections, but HUD believes that coordinating the timing of the inspection with the end of a calendar year is important to ensuring that information required to be reported by the end of a calendar year is reported by such deadline and properties are scheduled for inspection at their appropriate cycle.

On the subject of when the responsible entity must conduct its physical inspection, HUD advises in this preamble and in the notice published elsewhere in today's edition of the **Federal Register** that HUD will complete all annual inspections required of properties covered by this part through December 31, 2000. Responsible entities should begin preparations for either one year and two year cycle inspections in accordance with this rule.

- HUD amends § 200.857 to provide for designation of properties as either standard 1, standard 2, or standard 3, on the basis of fixed points, not percentile

groupings as provided by the proposed rule. Properties receiving scores of 90 points or higher on a physical inspection will be designated as standard 1. Properties receiving scores of 80 points or higher but less than 90 on a physical inspection will be designated as standard 2. Properties receiving scores of less than 80 will be designated as standard 3. Because scores can include fractions (*e.g.* 89.3), a score that includes a fraction below one half point will be rounded down, and a score that includes a fraction of one half point or higher will be rounded up. For example, a property score of 89.5 or 89.6 will be rounded to 90 and the property will be designated as standard 1. A property score of 89.4 will be rounded down to 89 and the property will be designated as standard 2.

HUD received considerable comment on the method provided in the proposed rule by which properties are designated as standard 1, 2 or 3. The commenters opposed designation on the basis of percentile groupings and recommended that designation be made on the basis of fixed points. HUD agreed with the recommendations of the commenters and has made this change at this final rule stage. HUD recognizes that fixed points provide a clear standard, understandable by those being rated at the time they are rated. HUD also recognizes that fixed point scores provide additional incentive for improvement since with a fixed score, owners know that improvement to a cut point will result in a less burdensome inspection schedule. HUD welcomes any additional comments on the change from a percentile approach to a fixed point approach in the designation of properties as standard 1, 2, or 3, and may make adjustments on the basis of comments received.

- HUD amends paragraph (a) of § 200.857 to remove reference to REAC's baseline physical inspection of properties. The baseline review has been completed.
- HUD amends paragraph (c) of § 200.857 to clarify that the 72 hours to report correction of exigent health and safety violations refers to 3 business days from the date of the physical inspection.
- HUD amends paragraph (d)(4) of § 200.857 to revise the definition of ''significant improvement'' to mean the correction of a material error, asserted by the owner, which causes the score for the owner's property to cross an administratively significant threshold (for example, the property would be redesignated from standard 3 performing to standard 2 performing or from standard 2 performing to standard 1 performing), *or result in an increase of 10 points or more* (new language is highlighted).
- HUD amends paragraph (e) of § 200.857 to provide that if an owner requests an adjustment of the physical condition score based on considerations other than those for technical review after the physical inspection report has been submitted to the owner (either electronically through the internet or by mail), the owner must make a request for adjustment to REAC within 45 days following submission of the report to the owner by REAC. HUD may, but is not required to consider requests made after that period. However, since the items that may be requested as a basis for score adjustment are unique and not subject to addition and change from period to period, owners are strongly encouraged to request database corrections prior to inspections. In this way, the inspection results can fully consider approved corrections, eliminating score deductions for approved database corrections and the need for post report adjustments. HUD also amends this paragraph to provide that requests for database adjustments are to be directed to REAC. The proposed rule provided for requests to be submitted to the applicable HUD Field Office. Since REAC, however, is the point of contact for requests for technical review, HUD determined that REAC is also the appropriate point of contact for requests for database adjustments.
- HUD adds a new paragraph (f) to § 200.857 to clarify when an owner's physical condition score becomes final. This new paragraph also notes that final physical condition scores will be made public by HUD, and the owner must make its physical inspection information (the physical inspection report, scores) available to residents to review upon request during business hours. Paragraph (f), (g) and (h) in the proposed rule are redesignated (h), (i) and (j), respectively.
- HUD adds a new paragraph (g) to § 200.857 to require an owner to notify its residents of upcoming physical inspections of the owner's property and to clarify the documents related to the physical condition scoring process that the owner must make available to its residents and when these documents must be made available. HUD also welcomes any additional comments on new paragraph (g).
- HUD amends newly designated paragraph (h) of § 200.857 to provide that a multifamily property that receives a score of 30 points or less on its physical condition inspection will be referred to HUD's Departmental Enforcement Center for evaluation.

In addition to these changes, HUD has made certain editorial and technical changes throughout the rule for the purposes of clarity.

III. Discussion of Public Comments

At the close of the public comment period on the November 26, 1999, proposed rule, HUD received 53 public comments. The commenters included residents, resident organizations and resident advocates, two housing authorities, nonprofit housing providers and housing industry organizations and associations.

In the discussion of public comments that follows, the heading ''Comment'' states the issue, opinion, recommendation or question raised by the commenter or commenters, and the heading ''Response'' presents HUD's response to the issue, question or recommendation raised by the commenters.

Resident Involvement in the Physical Inspection Process

Many of the resident commenters on the rule stated that the rule should provide for more resident involvement in the physical inspection process. The comments on resident involvement are as follows.

Comment. The proposed rule omits almost completely resident involvement in the physical inspection process. The rule should provide for resident involvement in the physical inspection process and specifically, provide for residents to be notified of the physical inspection results, as well as be provided with copies of the inspection report, any related documents, any owner appeals, and compliance plans. The rule also should provide for the issuance of quality control reports that include the input of residents. These recommended provisions should be placed in a new regulatory section that will address how residents will participate in the physical inspection process.

Response. HUD recognizes the importance of involving residents in the physical inspection process to ensure that their housing is decent, safe, sanitary and in good repair. HUD declines, however, to adopt the suggestion that the rule require resident involvement in the physical inspection of the housing as recommended by the commenters. HUD has had many discussions with resident groups on this topic and has explained that the inspection process itself does not lend itself to conversational input. Instead,

the process relies on objective observation.

To ensure that there is sufficient opportunity for the residents to participate in seeing that all necessary repairs are made in a timely, efficient and comprehensive manner, HUD is making several changes to the rule at this final rule stage. As noted earlier in this preamble, HUD is requiring owners to notify their residents of upcoming physical inspections of their units and the housing development, generally. HUD is also requiring owners to make the physical inspection information (the physical inspection report, scores) available to residents to review upon request during regular business hours. With respect to the results of a property's physical condition, HUD will make public the results of the physical inspection scores of the properties similar to the manner in which HUD makes public the results of physical inspection scores of public housing under the Public Housing Assessment System.

Comment. Residents should have the same right of appeal of physical inspection scores that is provided to owners. Residents should have the right to appeal any and all aspects of the physical inspection finding, and appeals should not be limited to material errors.

Response. The responsibility for the physical condition of the property rests with the owner. It is the owner's responsibility to review the physical inspection report, and to submit information clearly describing the errors and omissions that have a significant impact on the physical inspection score in accordance with the conditions and requirements of the rule. However, as discussed earlier in this preamble, HUD has added a new paragraph at this final rule stage that requires owners to notify residents of upcoming physical inspections of the properties and to make documents related to the physical inspection available to the residents, and that also invites residents to submit comments directly to HUD on the condition of the housing in which they reside.

Comment. A resident representative should be present for the on-site physical inspections.

Response. HUD declines to impose this requirement in its rule. The intent of the physical inspection process is to limit the inconvenience to the owner and the residents of the property being inspected. HUD believes that increasing the number of participants in the physical inspection process could slow down the inspection (thereby increasing inconvenience) and also jeopardize the objectivity of the inspection process.

Comment. The rule should provide for residents, rather than owners and managers, to verify that any exigent health and safety violations have been corrected by the managers and owners.

Response. Again, the physical condition of the property is the owner's responsibility and correction of exigent health and safety violations (as well as other deficiencies) is the owner's responsibility, as is the verification that these violations have been corrected. The sanctions can be severe if an owner falsely certifies exigent health and safety violations have been corrected.

Comment. The rule should provide that the property inspector is required to meet with the residents of the property. The rule also should provide that the inspectors are to leave a resident a notice if a unit was inspected and no one was at home.

Response. HUD declines to adopt these suggestions. The duties of the inspector are limited to conducting the physical inspection of the property. Notification to absent residents is the owner's responsibility. This is one reason an owner's representative is required to accompany the inspector.

HUD notes that several resident commenters made suggestions about how a resident survey should be conducted. Although resident surveys were part of the rulemaking for HUD's Public Housing Assessment System (PHAS) regulations, they are not part of this rulemaking, but HUD is further considering this issue.

Physical Inspection Coverage

Comment. HUD's physical inspection software should address tenant malfeasance or nonfeasance and the owner should not be penalized for tenant noncompliance. The physical inspection needs to be limited to habitability issues, not tenant housekeeping/tenant caused conditions, unless these conditions are a direct threat to structural soundness or a safety issue.

Response. HUD's physical inspection system is objective and does not distinguish between those defects that are the fault of a resident and those that are the fault of the owner. The physical inspection system is simply a tool for observing and transmitting data regarding the physical condition of the property at the time of the inspection. An owner of HUD assisted or insured housing is contractually responsible for maintaining the physical condition of the property. HUD anticipates that owners of such assisted or insured rental properties, like all landlords, will rely on lease provisions regarding the resident maintenance or destruction of the units, and HUD encourages owner to do so in compliance with the physical condition standards. Good property management, which includes regular housekeeping and preventative maintenance inspections through the year, coupled with strict lease enforcement will result in well-maintained housing that meets the standard.

Comment. The rule should view as health and safety issues the basic accessibility design features which are required in federally funded housing units to assure all people can safely utilize the dwellings. Proper and required accessible design features contribute to the overall well being, both physically and financially of the housing. The rule also should clarify that deficiencies with any physical accessibility features of the units (or the housing, generally, will be classified as Exigent Health and Safety Deficiencies and shall require resolution.

Response. Housing design, including accessibility design, is not a feature of HUD's Uniform Physical Condition Standards. HUD's Uniform Physical Condition Standards focus on whether the housing is habitable, is decent, safe, sanitary and in good repair. HUD's Office of Fair Housing and Equal Opportunity is charged with determining compliance with accessibility requirements under the Fair Housing Act or Section 504 of the Rehabilitation Act of 1973 where complaints of violation of these statutory requirements have been alleged. (This office, however, is not responsible for ongoing inspections of maintenance of accessibility features in a unit or building.) To assist HUD's Office of Fair Housing and Equal Opportunity in its task, the inspection collects specific information related to general accessibility. This information is provided to the Office of Fair Housing and Equal Opportunity in the event such information reveals a absence of accessible features where these features should exist.

Ranking and Thresholds for Designation

The overwhelming majority of commenters who commented on the proposed performance designations (*i.e.,* Standard 1, Standard 2, Standard 3), which were based on percentile groupings, were opposed to the percentage groupings and requested that performance categorizations be based on fixed scores. The comments on this issue included the following.

Comments. The ranking classification in the proposed rule fails to provide guidance as to the numeric cut-off for each performance designation (*i.e.,*

standard 1, standard 2, standard 3.). The rule should only use numeric classifications.

The issuance of grades by curving results will not work. The numeric scoring has in fact become the standard in the past 1½ years and should not be changed. A curved ranking is at odds with the possibility of a meaningful appeal.

HUD needs to explain the rationale in holding public housing to an absolute standard (under PHAS) and private HUD assisted housing to a relative standard based on an absolute grade.

HUD should not use percentages, but set a score to objectively rank properties and then conduct annual inspection only for the marginal properties in the bottom 17% or so.

With baseline results completed, to distinguish between properties that all are deemed to be satisfactory based on the percentages in the proposed rule is arbitrary and it increases lender inspection costs with no apparent benefit.

An absolute score is preferable to the standards in the proposed rule.

Response. As noted earlier in this preamble, this final rule sets the numeric standards for all three categories. As noted earlier in this preamble, HUD recognizes the need by owners for a clear standard, understandable by those being rated at the time they are rated, and fixed points provide this standard. HUD recognizes that the percentile approach was obscure in this regard.

Comment. The rule did not advise how HUD will make known the numeric thresholds for the three tiers and how often the thresholds will be evaluated. If numerical thresholds are to be applied based on national numerical thresholds or will regions have their own discrete numerical assignments on the administrative significant thresholds.

Response. All thresholds will be national. Any changes to the thresholds will be made only as needed to maintain the health of HUD's portfolio, and HUD will provide appropriate notification of any changes to the numerical thresholds.

Frequency of Inspection and Post-Inspection Processes

Comment. Physical inspections of properties should be mandatory when requested by 10% or more of the residents of a property, or when requested by a resident organization that meets HUD's standards.

Response. HUD declines to adopt this suggestion as a regulatory requirement. If there are concerns by residents of the property in which they reside, they are encouraged to contact their local HUD Field Office and relay these concerns, and HUD will make the appropriate inquiries to follow-up on these concerns.

Comment. The frequency of inspections should be determined by the property's score on the 100 point scale, rather than its score relative to other properties. It is the condition of the building that is of concern and it is only the building's condition that is within the owner's power to control—not the score relative to other projects.

Response. As noted earlier in this matter, the rule has been revised to provide for fixed point scores and the frequency of inspections is based on these fixed point scores.

Verification That Repairs Have Been Made

Comment. Owners should not be allowed to self-certify that repairs have been made. This self-certification is at odds with HUD's emphasis on strict, objective, and professional inspections. When an inspector finds violations, management is not concerned about correction of these violations because no one comes back for two or three years, and when HUD returns, it is a different inspector who does not review the previous report. The rule should require reinspections by the same inspector to confirm that repairs have been made.

Response. HUD does not agree that it is practical or necessary to require that subsequent inspections be conducted by the same person, year after year. HUD and mortgagees will generally use contract inspectors, and it is not unusual for contractors or personnel employed by contractors to change from year to year. In addition, the design of HUD's physical inspection system focuses on an inspection of the property that will produce objective, consistent results. Therefore, the person who undertakes the inspection, provided the person is trained and certified to use HUD's inspection system, is not a determining factor in the outcome of the inspection. Additionally, those properties for which there are serious physical concerns are inspected annually, not every two or three years as the comment suggests. Given how the inspection process is conducted, the certification required of owners is not at odds with HUD's inspection system. The owners' certification that repairs have been completed is part of an ongoing monitoring plan which will assist HUD in determining if conditions have improved.

Comment. HUD should take strong action against owners with seriously substandard buildings—that is the owners who fail to comply with the physical condition standards. The owner's properties should be transferred to a non-profit or to resident owners who will maintain the properties as decent, safe and affordable housing.

Response. HUD has no authority to require the transfer of owners' properties that have been found substandard, to a non-profit organization or residents or resident organization but, if these organizations have the resources to correct the problems, they may be eligible purchasers of the properties. The rule, however, provides for the full range of enforcement actions available to HUD to initiate against owners who refuse or fail to comply with HUD's physical condition standards.

Comment. With respect to administrative review of properties and enforcement actions, the rule should provide that reinspection of properties is mandatory where there is a Departmental Enforcement Center (DEC) Compliance Plan in place.

Response. HUD declines to adopt this recommendation as a regulatory requirement, but HUD notes that the DEC has the option to take this action under the rule. Properties under evaluation by the DEC as a result of physical condition deficiencies would be reinspected annually.

Properties Covered by the Rule

Comment. Nursing homes, intermediate care facilities, assisted living facilities, and board and care homes should be excluded from the rule's coverage.

Response. HUD requires inspection of these properties to determine if Federal Housing Administration (FHA) funds are at risk and if the physical condition meets the needs of the resident population. Since these properties are insured or HUD-held, a physical inspection is appropriate.

Comment. Reference to coverage of Section 241 of the National Housing Act (NHA) projects (Supplemental Loans for Multifamily Projects) in the rule should be modified to provide that these projects are to be inspected except where the underlying mortgage is insured or assisted by HUD under a program covered in this part. Without this qualification, there may be duplication of inspection.

Response. As noted earlier in the preamble (see Section II), HUD has made this clarification in this final rule.

Comment. The proposed rule does not address new construction properties. New properties in conformance with HUD's final cost certification should be

given a 3 year waiver before inspection begins.

Response. As discussed earlier in this preamble (under Section II), the final rule addresses newly endorsed properties and provides for a physical inspection to be conducted within approximately two years from final endorsement.

The Training and Qualifications of the Physical Inspectors

Comment. The training provided to inspectors is still not sufficient to ensure proper application of the physical condition standards consistently between properties. While HUD's physical condition and inspection system is clearly more objective in its design, it is still subject to wide variations in its implementation which is attributable, in part, to minimally trained inspectors looking at similar conditions and reporting them with varying degrees of severity. HUD should implement a uniform method of training and certification.

Response. The training of inspectors who are certified in the use of the HUD inspection protocol is standardized. To ensure appropriate and adequate training of inspectors, HUD sought experts in the field who would take the lead in actually presenting the materials developed by HUD and training the inspectors. In addition to selecting experts in the field to perform the training, every inspector candidate must meet the minimum qualification requirements determined by HUD. The inspector candidates also must take the required course and then take and pass a test. HUD monitors and controls all aspects of this training process through REAC.

Since the inspection under HUD's new standards and physical condition protocols began in approximately October 1998, the initial start-up involved some refining as one would expect given the size and magnitude of the portfolio to be inspected. In certain cases, problems were encountered and HUD responded to these problems. HUD believes that the process overall, however, is now running smoothly. HUD is striving to constantly improve and refine the process and will continue to do so in the future. In this regard, HUD also provides for periodic retraining of the inspectors, to ensure that the inspectors are up-to-date and familiar with any changes made to the physical condition protocol and software.

HUD acknowledges that even with qualification and training requirements imposed on inspectors, some inspectors, as is the case in any profession, perform better than others. REAC monitors the inspectors, and HUD invites owners that have concerns about an inspector's ability to contact REAC through its Technical Assistance Center (1–888–245–4860).

Comment. Inspectors need to have knowledge of local building and fire codes in order to conduct an accurate and informed inspection.

Response. HUD disagrees with this suggestion. HUD's physical inspection protocol have some basis in a national codes (e.g., fire safety) but there is too much variation among local and state codes to make the use of local code an efficient and effective alternative to HUD's physical inspection protocols. Additionally, the responsibility of HUD contract inspectors is to determine whether HUD assisted and assured housing meets HUD's Uniform Physical Condition Standards, not to ensure enforcement of local building codes.

It is the responsibility of the owner to be cognizant of and abide by all local codes. HUD notes, however, that there are allowances built into HUD's physical inspection protocols, as noted in the November 26, 1999 proposed rule, that provide for an owner to notify HUD of significant conflicts between HUD's Uniform Physical Condition Standards and local code requirements or other local requirements applicable to the property.

Comment. HUD requires the use of qualified and trained inspectors but gives no information on this process so that a lender's inspector can benefit from this training and meet HUD's qualifications.

Response. The response to an earlier comment described the requirements that individuals must meet to become HUD contract inspectors. Persons and firms that are required to comply with HUD's Uniform Physical Condition Standards may seek to have their own employees trained and certified. The common element is that the party that actually performs an inspection (to conform with HUD requirements) must complete and pass HUD's qualification training and testing for property inspectors. Each successful candidate will be issued identification from REAC as evidence that the candidate has met all requirements. It is important to note that parties that wish to better understand the REAC protocol, may participate in REAC monitored training. However, only inspectors who are working for HUD contractors, multifamily lenders or who perform inspections under independent third party contracts will be issued final identification. The information about how to become a HUD contract inspector is (and has been) available from REAC's Internet site at http://www.hud.gov/reac. Additionally, interested parties are welcome to call REAC's Technical Assistance Center at 1–888–245–4860.

Simplifying and Improving the Scoring Process

Comment. The rule should provide a simpler and abbreviated physical inspection protocol for smaller properties where property facilities are less complicated and the loan balance is small. Smaller loan balances mean lenders have less money for inspections. These properties do not have need for a complicated, multi-tiered inspection on amenities and facilities that do not exist. For smaller properties, inspections should not be more than every two years.

Response. HUD is charged with assuring all housing is decent, safe, sanitary and in good repair, not just larger properties or properties with large loan balances. HUD's physical inspection protocols are structured in a manner to adjust for size and properties that have amenities and facilities and those that do not. Additionally, HUD's rule provides for cost savings through less frequent inspections for properties that are well-maintained. HUD's obligation to ensure that its assisted and insured housing is decent, safe, sanitary and in good repair does not permit HUD to exempt a property from an annual inspection, simply because the property is a small property.

Comment. The physical inspection process would be improved if HUD requires the inspector to clearly communicate each observable deficiency and ensures that a detailed written report of deficiencies is left with the owner.

Response. HUD agrees with this comment and all inspectors have been trained to communicate the defects that the inspector records to the owner's representative during the inspection. While HUD acknowledges that the owner's representative may have differing views regarding the deficiency definitions and may express those views to the inspector, the inspectors are trained not to engage in a discussion of the merits of the deficiency definitions. Inspectors have no authority or discretion to alter the definitions of deficiencies or the severity level assigned. Inspectors must record the deficiencies in accordance with the inspection protocol. At this time, technology that would allow HUD to leave a copy of the inspection report immediately following the inspection remains too expensive. Therefore, a

copy is provided to the owner within a few days of the inspection.

Comment. HUD's inspection report should show the score of each observable deficiency.

Response. HUD has revised the inspection report to show the points deducted for each observed deficiency.

Comment. HUD's physical inspection protocol should take into consideration minor routine repairs in assessment. The weighting that minor repairs receive can be as much as deferred maintenance or major repairs. Therefore, the inspection protocol software should provide a category of noted, routine repairs without a point loss and should note the difference between minor, routine repairs and deferred maintenance of capital needs, and showing the scoring effect should clarify this.

Response. HUD's protocol already takes into consideration minor defects and repair requirements by way of the scoring process. The inspection summary report notes the difference on a summary basis between routine repairs and capital needs.

Comment. The rule should define the meaning and application of ''health and safety.'' It is unclear what HUD means when it refers to health and safety or how health and safety is scored. Clarification is important because failure to correct such a deficiency could result in demotion from standard 1 or standard 2 to standard 3.

Response. Health and safety concerns are clarified in 24 CFR 5.703(f), which this rule cross-references. Exigent health and safety deficiencies are a distinct subset of health and safety standards and are considered a risk to life. A standard 1 property for which extreme hazardous conditions are not corrected would be subject to further inspection and may change designation as a result of that reinspection.

Appeal, Technical Review, Burden of Documentation and Reinspection

Comment. It is unrealistic to require owners to use the ''Items, Weights and Criticality'' document to make the determination, within 15 days, that an error has occurred that if corrected would result in a significant improvement in the scoring process. The scoring process is very intricate and complicated and point values change dramatically depending on elements at each specific property.

Response. To address this concern, HUD has revised the inspection summary reports so that they will show the point value for each cited deficiency.

Comment. The requirement in § 200.857(c) to report to HUD within 72 hours of the inspection that exigent health and safety items have been mitigated is neither practical nor reasonable. HUD should allow a response of 10 working days. The rule should clarify that the 72 hour limit in § 200.857(c) means 3 business days.

Response. The final rule makes the clarification that 72 hours refers to 3 business days from the date of the physical inspection, the date the owner receives the notice of exigent health and safety deficiencies. HUD, however, declines to extend this period beyond 3 business days. This time period mirrors the critical need for the owner to repair or mitigate the most serious health and safety conditions immediately.

Comment. The 15 day time period for response and appeals is unrealistic. HUD should allow at least 30 days. The time to evaluate the complex score and report is the same in order to prepare a detailed and adequate response and appeal. HUD should provide owners with a reasonable time to challenge inspection results because they have the burden of proof and must provide substantial evidence.

Response. HUD declines to expand the response time. HUD believes 15 days is sufficient time to prepare a response and submit a request for technical review. As noted earlier, HUD requires inspectors to point out defects as they are observed on the day of the inspection to the owner's representative. The score impact of every item observed is known at the time the inspection report is issued to the owner.

Comment. Because the rule relies on owner responses in prescribed time periods following HUD's notification, the rule should state that time periods begin after the owner receives notice from HUD. HUD correspondence is received/postmarked considerably later than it is dated.

Response. To avoid delays between submission of the report to the owner and the owner's response to HUD, HUD is planning to have all inspection reports available to the owners through the Internet. For those owners without Internet capability, HUD will consider mailing the results. However, HUD allows, as an allowable project expense, the reasonable cost of an internet service provider so that over time we expect that virtually all properties will have access either on site, through the agent's off site office or a sharing arrangement with other providers.

Comment. HUD should revise communications with owners in a way that the final report presents a more realistic picture on the property. The current report focuses on what is wrong and when it is read in a vacuum, regardless of the property's score, the report presents an out-of-line picture.

Response. The report shows the potential score of all inspectable items, not just those items identified as deficiencies. HUD believes that the report which now shows the potential score for all inspectable items combined with the score for items identified as deficiencies allows a balanced view.

Comment. The rule takes the right approach in providing that reinspections are HUD's responsibility. If a mortgagee uses a HUD certified inspector and HUD's physical inspection protocols and the inspection is technically acceptable then the mortgagee has fulfilled its obligations. If the owner challenges the results, the owner will request HUD, not the mortgagee, for a reinspection.

Response. The mortgagee is responsible for performance by its employees or contractors in a manner to assess that the product transmitted to HUD is of good quality. REAC reviews all inspections and, in the event the inspection is not acceptable, the mortgagee, which commissioned the inspection, must complete the inspection even though this may mean having another inspection completed. REAC makes every effort to cure problems arising from the review. If this is not possible, REAC will notify the mortgagee of the problems and provide time to correct the errors. However, some errors such as inadequate sampling are not correctable without another visit to the property to complete the sample required.

Comment. The rule should provide a process for the owner and management agent to receive inspection related communications and to allow the owner the option to allow simultaneous electronic release of this information to additional parties, such as front line manager, legal counsel board chair, etc. This would expedite communications and allow front line operators to have maximum time to prepare needed responses.

Response. Once electronic Internet access is completed, the owner may designate personnel to act to retrieve and respond to inspection reports. HUD will, however, always look to the owner of record as the party responsible for action or inaction.

Comment. The errors for which an owner may request a technical review and have a reinspection violate the precepts of fairness. The definitions of material errors refer to obvious mistakes, but these are the exception, not the rule. An inspector's decision

about the seriousness with which an owner would have a legitimate disagreement cannot be challenged. The degree of deficiency is subjective. Three different inspectors with the same training and manual at the same building could come up with disparate scores because of their own unique perspective. The rule should allow an owner to request a technical review in any circumstance where the property score is below a standard 1 level. The grounds for appeal should be broadened to cover serious problems with the inspection definitions and with an inspector's failure to carry out the protocol.

Response. HUD disagrees with the comments. The seriousness of a defect is not subjective. Each defect is defined and each inspector is fully trained and tested to achieve maximum objectivity in determining the severity of defects. In addition, the REAC Quality Assurance personnel are charged with reviewing work performed by inspectors at regular intervals and at random.

Comment. A percentage change in the numeric score is a better trigger for reinspection and rescoring, not a change in the standard classification.

Response. HUD disagrees. A large percentage score may not move a property out of a particular operating mode while a small point increase could change the oversight and general program eligibility of an owner.

Comment. The rule should make clear that the lender does not conduct follow-up inspections.

Response. The lender may wish to make follow-up inspections as part of its own quality assurance plan. However, if an inspection is accepted by REAC, resolution of the deficiencies is the responsibility of HUD.

Comment. An issue arises when a reinspected project may not obtain the full benefit of a higher score even if original inspection error is rectified. With the ''loss limiting'' algorithms built into the system because of the scoring categories, an owner cannot know if removal of one of several defects will raise the score to meet a threshold.

Response. The inspection summary includes the value of all defects and thus shows all possible points deducted. The inspection summary also shows the total possible points for the site, a given unit or a given building exterior, etc., and this allows a determination of the extent to which points lost may exceed the loss limit referred to in the comment. (Under the scoring algorithms, the points deducted for the site of an individual unit building's exterior, systems or common areas cannot exceed the possible points.) If an error is found that has significant impact on the score, the owner may request a technical review. HUD does not wish to burden the system with technical review requests that do not have a significant impact.

Comment. All errors must be corrected, even if the correction would not result in the score crossing the threshold. HUD should provide an explanation to the owner/manager of the total score that could be achieved assuming all identified errors are corrected. If HUD determines that error correction will not result in recategorization, the score should be adjusted to correct for these errors. If HUD determines a new inspection is warranted, it should be at HUD's expense. Only when the owner challenges errors that do not exist should the owner pay for the reinspection and any reinspection, if not paid by HUD, should be an allowable project expense.

Response. HUD now provides the absolute point reduction for each and every defect cited. When no defects are present, the maximum score is 100 points. The comment appears to suggest that HUD engage in evaluating owner request for technical review for even fractional points which have no effect on the property. HUD believes this process does not consider the overall objective—which is property that is decent, safe, sanitary and in good repair. HUD will require the owner to make full payment for a new inspection that is performed based on an owner's technical review request where the result does not cross a signification threshold. This remains a necessary part of the process from HUD's perspective in order not to burden the process with inconsequential request.

Comment. Upon receipt of satisfactory second round inspections, HUD should remove from the permanent project file, at the owner's request, the first round results.

Response. HUD disagrees and will not remove the results of inspection reports from the permanent project file. However, if a subsequent inspection crosses the threshold from standard 2 to standard 1, the owner will immediately be eligible for the every-three-year inspection. The administrative record will continue to hold all valid information.

Comment. The procedures for appeals should be modified in several respects to improve effectiveness and efficiency of the approval process. The procedures should be modified to allow the expense of the appeal to be covered in the budget; to place the burden on HUD to work with owners to advise them of the numerical impact of any and all elements of interest to the owner until the significant thresholds have been published and all inspection reports issued in a way to allow an owner to readily determine whether or not certain elements, if successfully appealed, would meet the administrative threshold requirement; and require HUD to reissue all inspection reports using the new end column format showing the numerical value for each deficiency at the owner's request.

Response. If a technical review is successful, HUD issues a new report. All reports now show the points deducted for each cited defect. The expenses of a reinspection that does not result in a significant improvement will remain the responsibility of the owner and will not be treated as a property expense.

Comment. HUD should be flexible in the type of documentation required for appeals. Owners may have a notarized letter from the local HUD office or from a local building code office, or a similar type of declaration in the absence of statutory language.

Response. HUD is flexible in the type of third party reasonable documentation and will continue to be so.

Comment. The term ''burden of proof'' is a legal standard for judicial or administrative settings with trained judges and rules with regard to submission of written and oral evidence. This term should not be used lightly without definition to control appeals from REAC inspectors. It would be appropriate to state the owner is expected to provide factual information supporting its appeal, but once HUD has that information, HUD's determination should be objective without ''weighing'' documentation based on HUD's interpretation of the term.

Response. While ''burden of proof'' is a term used in the judicial or administrative hearing context, the use of such term is not confined to those settings. HUD believes that § 200.857(d)(2) makes clear the standard of factual information and supportive document (*i.e.,* proof) that the owner must submit.

Comment. Responsibility to show errors should not rest solely with the owner but with HUD and the inspector as well. When the deficiency has a significant numeric impact and the owner cannot locate the deficiency, HUD and/or the inspector should be required to produce evidence (and visit the site to point out the deficiency). Otherwise, HUD should remove the notation and the scoring impact. During subsequent inspections, HUD should (i) reinstate the exit interview for

inspectors to point out deficiencies as they enter them so owners can locate them and understand the type, (ii) make notations in the comments section of repairs done in presence of inspectors, and (iii) include the owner's statements about long range maintenance plans, etc.

Response. HUD agrees and both the proposed rule and this final rule allow for mutual resolution of the claim of a non-existent deficiency. HUD believes, however, that the first level of claim that an error has occurred must come from the owner in the form of reasonable documentation. Examples of reasonable documentation have already been provided.

Additionally, as noted earlier in this preamble, inspectors are now requested to communicate observed deficiencies orally on site. All inspectors have been trained to ''call out'' inspection deficiencies as they are observed. This methodology eliminates the need for the ''close out conference'' and provides the owner or owner's representative with a running account of what is being recorded as the inspection process is conducted. Revised definitions concerning deficiencies allow the inspector to consider specific areas that may be cured on site in the presence of the inspector. For example, if an electrical panel in a unit is blocked but the blockage (such as a picture) can be easily moved in the presence of the inspector, the defect will not be recorded. An additional example is the following—in the event that the site shows significant litter in and around a small area, the inspector will not record the defect if staff is actively working to remove the litter.

Comment. Owners should not have to bear costs of reinspection even if results do not change classification. It is punitive for owners to bear the cost of reinspection and it serves to dissuade appeals if owners bear the cost when the appeal is unsuccessful. If inspectors make technical/obvious mistakes that would improve a numeric score from 32 to 58, owners should not bear the cost. Owners should not have to pay for what in most circumstances will be an honest difference of opinion.

Response. A difference of opinion is not the same as an error. HUD does not wish to attempt to dispute an owner's opinion but is willing and able to correct errors committed by inspectors. As noted in Section II of this preamble, HUD has revised the rule at this final rule stage to include in the definition of ''significant improvement'' a movement of 10 points or more as a result of the technical review. Payment for reinspections that result in less than significant improvement will be the responsibility of the owner.

Comment. HUD should clarify that a third party inspection is objective evidence supporting any claim of technical error. HUD also should clarify that the evidence may be from the owner if it is reasonable and supported with more than a new allegation.

Response. If an owner believes that such an inspection meets the standard of reasonable documentation, it will be considered. However, such inspection should be comparable to the REAC inspection. The inspection should present documentation that cites specific HUD requirements not opinions.

Comment. A shortfall of the proposed rule is the inability of the owner/manager to obtain a revised higher score by completing repairs or presenting an acceptable plan for completion to HUD. The rule should permit an owner/manager to petition for reinspection based on repaired conditions, with the owner paying for all or part of the reinspection cost.

Response. The inspection protocol is intended to capture the condition of the property at a certain point in time. HUD realizes there will always be some outstanding maintenance items. Routine maintenance needs have no significant impact on the score.

Enforcement Actions

Comment. Dividing appeal decisions between REAC and HUD Field Offices makes for a complicated and confusing appeal system. REAC is responsible for the technical aspects of inspections, inputting data, scoring, and objective information. HUD Field Offices and Hubs are responsible for area specific, qualitative judgments such as local code conflicts with inspection protocol or whether the facilities are the responsibility of a third party or whether ongoing rehabilitation or maintenance should delay the inspection. Appeals should be directed to one HUD office. All appeals should be directed to the Office of Housing.

Response. HUD does not use the term ''appeal'' in the rule but understands that the issues the commenters are raising concern the technical review process that is under REAC's jurisdiction and the adjustment of physical condition score due to local circumstance which, the proposed rule provided was under the jurisdiction of the applicable HUD Field Office or Hub. HUD agrees with the commenters that requests for review of concerns about a property's score should all be directed to one office and the final rule provides that the office is REAC.

Comment. The rule needs to provide a standard for when the HUD Field Office determines to refer a matter to HUD's Departmental Enforcement Center (DEC).

Response. The final rule provides that a property that receives a physical inspection score of 30 or below will be referred to the DEC for evaluation. This is a clear and objective standard.

Comment. The rule is clear about the owner's responsibilities, but less clear about the owner's right to receive a copy of its file so that everyone is reviewing the same information. The file includes information and history beyond the physical inspection report.

Response. The significant information for the owner is the inspection report. To the extent other information is needed as background, the information is generally available to the owner from the local HUD Field Office.

Comment. The role of HUD's Field Offices should be clarified in the rule and Field Office staff should be encouraged to make judgments when their experience is at variance with inspection results.

Response. While HUD highly values input from its Field Office staff, the key feature of HUD's physical inspection process is to provide for an objective system. Conclusions drawn from relationships with owners and personal knowledge of the properties are inconsistent with an objective evaluation of the physical condition of a property.

Comment. The rule should provide assurance that no enforcement action would be initiated prior to a decision on appeal.

Response. HUD cannot make this commitment. Circumstances may compel HUD to take immediate enforcement action. In fact, the rule specifically provides that the administrative process described in the rule does not prohibit the Office of Housing, the Departmental Enforcement Center or HUD generally from taking whatever action may be necessary (when necessary) as authorized under existing statutes, regulations, contracts or other documents to protect HUD's interests in multifamily properties and to protect the residents of these properties. (See 24 CFR 200.857(h)(4).)

Comment. The rule states that the administrative process in the rule will not be construed to limit HUD's ability to take other enforcement actions; however the extent to which such actions can be taken should be described in the rule.

Response. HUD declines to repeat in this regulation the enforcement actions that are available to HUD and that are

listed in other HUD program regulations that may be applicable to owners (depending on the HUD program in which they participate) or contracts or other documents. Generally, HUD participants that are covered by these other requirements are familiar with them.

Comment. The rule should make clear that HUD, not the lender, is responsible for the compliance plan process. Section 200.857(h) refers to the owner's compliance action but does not refer to HUD's participation in the process.

Response. This section clearly provides for the actions and duties that the DEC may and will undertake and the DEC is a part of HUD.

Comment. HUD should establish a Departmental Evaluation Center in addition to the Departmental Enforcement Center. Section 200.857(f) of the proposed rule speaks of evaluation through administrative review. It is problematic for properties to emerge from DEC even when no fault is found and scoring problems result from complicated property situations.

Response. HUD's Departmental Enforcement Center has the expertise to perform the administrative review described in § 200.857(f). There is no need to establish a separate evaluation center.

Cost of the Physical Inspection

Comment. The rule does not specify or limit the financial burden of an inspection to be placed on lenders. The rule should state that there will be no material change in the inspection process that will materially increase costs, and the rule should define ''material increase in cost'' to be no greater than 5 percent.

Response. Although the rule does not specify a limitation to the financial cost of an inspection placed on lenders, as discussed in the November 1999 proposed rule, HUD has taken significant steps to minimize the costs of inspection to lenders and owners. HUD's inspection software and guidebook is distributed to HUD's program participants without cost. HUD also has placed these materials on the web so that they can be downloaded and therefore no shipping costs are incurred. Additionally, in the proposed rule, HUD advised that it would not materially alter the physical inspection requirements in a manner which would material increase the cost of performing the inspection (see 64 FR 66535, middle column.)

Comment. Section 200.857(h) in the rule should be revised to remove the word ''software'' because this raises concern that HUD may add features that are enhancements (provide pictures from digital camera) but not necessary to the inspection process and therefore make the software more costly.

Response. The use of the word ''software'' is the appropriate term. The term describes that set of stored procedures and operating instructions that allow the data collection device to function. Inspection data is already in the software. Digital pictures are not part of the functionality of the software.

Regulatory Amendments That Adversely Affect FHA Lenders

Comment. The changes to the physical inspection process proposed by the November 1999 rule would be a violation of § 207.499 and the mortgage insurance contracts. The change in the inspection process, as provided in this rule, is likely to change and increase costs for lenders in a manner not contemplated in existing mortgage insurance contracts. The changes expand the role and scope if the inspections performed to date. HUD will greatly increase the costs by requiring new computer systems and software and these new protocols may exceed the lender's service income. To control costs there must be (i) an adequate number of certified inspectors and inspection companies to ensure competition; and (ii) reduced frequency of inspections for better performing properties.

Response. The insurance contract provides for the mortgagee to perform the inspection pursuant to HUD requirements and, the insurance contract has not been adversely affected.

Comment. HUD should add a provision to this rule that states that the FHA Commissioner may amend these regulations but the amendments shall not adversely affect the interest of a mortgagee or lender under the contract of insurance.

Response. HUD declines to add this provision to the rule. HUD needs the flexibility to promulgate such amendments that HUD believes are necessary to make the housing programs effective and to fulfill the statutory obligations and objectives imposed on HUD for these programs.

Timing of Implementation of the Rule

Comment. Implementation of the rule should be four months after existing mortgagees have been provided with baseline scores and after HUD has successfully tested the computer system for scheduling and retrieving inspections.

Response. To accommodate concerns in this area, HUD has agreed to perform all inspections required through December 31, 2000. This will allow additional transition and planning time for lenders.

Comment. Because the parameters and definitions in the current baseline inspections are being refined and revised, and the baseline inspection is almost complete, it does not make sense to require new inspections to be performed during the revision process.

Response. HUD did not require any new inspections during this period of baseline inspections.

Comment. The rule should provide for retroactive application to ensure owners have fair opportunity to address scores and be on record that the score is inappropriate. Otherwise, there may be injurious results to owners and their reputation which remains permanently on the record.

Response. Owners have always had the opportunity to address scores if they believe they are inappropriate. Project Managers will ensure that any complaint, inquiry or concern is addressed. Should the Hub/Program Center Director believe a complaint about a score or anything else from an owner is valid, it should be addressed. HUD Field Office will forward the complaint to the Office of Asset Management at HUD Headquarters for review and action. Should Headquarters believe additional follow-up is necessary, Headquarters will forward to HUD's Real Estate Assessment Center for appropriate review and action. Complaints are posted in ''REMS'' at the Field Office level. If forwarded to Headquarters they are logged and monitored to ensure the owner receives a response by Headquarters and/or the Real Estate Assessment Center.

Entity Responsible for Inspection/ Duplicate Inspection Requirements

Comment. The rule needs to clarify that for properties with more than one HUD insured loan, only the first mortgage lender is required to conduct the physical inspection with the second mortgage lender having access to the inspection. The rule also needs to clarify that only one mortgage inspects when there is a first and second mortgage.

Response. HUD agrees and the final rule makes these clarifications.

Comment. The rule should specify the responsible party for Section 8 assisted properties. The rule does not address administrative difficulty and duplication of costs for lenders who perform inspections, and Section 8 contract administrators. For those properties with a mortgagee different from the section 8 contract administrator, the rule should provide

that the Section 8 contract administrator performs the inspection.

Response. The intent of HUD is to have inspections performed no more frequently than annually and that a single inspection will suffice for all parties that have a need to perform these inspections. For the HUD insured portfolio, the lender will perform all required inspections; HUD will not duplicate this effort. Newly appointed contract administrators will not perform or arrange for property inspections. HUD will perform the property inspection if there is no mortgagee. Existing contract administrators are required to inspect annually all units in a property that they are responsible for administering. However, the oversight the contract administrator performs does not include the HUD physical inspection protocol: HUD will perform this inspection. When the contracts are renewed, the administration will be turned over to more recently appointed contract administrators, and at that time, inspections will be performed only by HUD.

Comment. HUD needs to clarify how the Comprehensive Needs Assessment, which includes a detailed inspection, interacts with the Uniform Physical Conditions Standards inspection. HUD requires owners who request Section 8 renewals to have a Comprehensive Needs Assessment. Section 8 renewals may be on a 1 to 5 year basis so the CNA is used more frequently. HUD needs to eliminate duplicate requirements.

Response. The Comprehensive Needs Assessment (CNA) and the Uniform Physical Condition Standards (UPCS) are related in that they both address property assessment but they are different types of property assessment. The CNA was designed to estimate the need for capital improvement over an extended period into the future. The CNA uses or can use the UPCS inspection results as a starting point in the CNA assessment. The result of the UPCS inspection, however, is a snapshot of the property at a specific point in time. The inspection results are statistically valid and therefore are useful as an overall evaluation of property condition at the point in time of the inspection. The CNA is not valid, in the same statistical manner as the UPCS, but the CNA is an estimate of physical needs which allows the owner to make long term plans to accumulate resources to assure the long term viability of property. The UPCS inspection will provide feedback to the owner and HUD about the CNA planning process and its validity as time passes. The two are related and should be used together but one cannot take the place of the other.

Comment. There is concern about a statement in the preamble that states other HUD offices may inspect for various purposes. The possibility of other inspections for other purposes seems duplicative and wasteful.

Response. This statement refers to HUD's statutory and regulatory requirements under other programs to monitor compliance with specific program requirements, which may include physical inspection, but generally are directed to other program requirements. For example, HUD's Office of Fair Housing and Equal Opportunity monitors owner compliance with requirements for accessibility and/or appropriate accommodations for persons with disabilities. This monitoring, however, is not a physical inspection to determine the quality and maintenance of the accessibility features, but rather one to determine that the owner has provided accessibility features and accommodations where they are required. The inspection conducted under HUD's Uniform Physical Condition Standards does not monitor compliance with accessibility requirements. Although HUD's physical inspection process collect specific data requested by HUD's Office of Fair Housing, it is important to note that this data is not part of the physical condition scoring process. Therefore, the examinations of accessibility features conducted by HUD's Office of Fair Housing and Equal Opportunity and REAC are not duplicative of one another.

Rulemaking Procedures

Comment. The inspection and scoring process, as noted in the preamble to the proposed rule was first introduced in HUD's Public Housing Assessment (PHAS) rule, which was limited to PHAs. HUD should have specifically sought comment from tenants in multifamily housing if it was considering extending that process to multifamily housing.

Response. HUD did solicit public comment from multifamily residents, owners, and lenders through publication of the November 26, 1999, proposed rule. It is the November 1999 rule that proposed a scoring process for multifamily housing properties, and the November 1999 proposed rule provided a 60-day public comment period.

IV. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The information collection requirements when approved will be assigned and OMB approval number and the public will be notified of this number. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. OMB determined that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made in this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Regulations Division, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410–8000.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That Finding remains applicable to this final rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410–8000.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule is not anticipated to have a significant economic impact on a substantial number of small entities. As stated in HUD's June 30, 1998, proposed rule and September 1, 1998, interim rule

on uniform physical condition standards, all HUD housing has been subject to physical condition standards and a physical inspection requirement. There are statutory directives to maintain HUD housing in a condition that is decent, safe, and sanitary. The rules on uniform physical conditions standards and uniform physical inspections do not alter these requirements, nor do they shift responsibility with respect to who conducts the physical inspection of the property. The entities and individuals responsible for the inspection of HUD subsidized properties remain responsible. This rule is a follow-up to the September 1, 1998, final rule on uniform physical inspection standards by establishing an administrative process by which multifamily housing properties are analyzed, scored and ranked. With the exception of exigent circumstances, the administrative process, as described in the preamble, allows for appropriate and reasonable notice and opportunity for review and comment, and a reasonable period for corrective action. With respect to the physical inspection process itself, in the preamble to this proposed rule, HUD reiterated its commitment to provide the software at no cost to covered entities as well as the accompanying guidebooks and to publish a notice that gives covered entities reasonable notice of when the software and guidance are available. With the implementation of any new or modified program requirement, HUD intends to provide guidance to the covered entities, particularly small entities, to assist them in understanding the changes being made.

Executive Order, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the programs that would be affected by this proposed rule are:

14.126—Mortgage—Insurance—Cooperative Projects (Section 213)
14.129—Mortgage Insurance—Nursing Homes, Intermediate Care Facilities, Board and Care Homes and Assisted Living Facilities (Section 232)
14.134—Mortgage Insurance—Rental Housing (Section 207)
14.135—Mortgage Insurance—Rental and Cooperative Housing for Moderate Income Families and Elderly, Market Rate Interest (Sections 221(d)(3) and (4))
14.138—Mortgage Insurance—Rental Housing for Elderly (Section 231)
14.139—Mortgage Insurance—Rental Housing in Urban Areas (Section 220 Multifamily)
14.157—Supportive Housing for the Elderly (Section 202)
14.181—Supportive Housing for Persons with Disabilities (Section 811)
14.856—Lower Income Housing Assistance Program—Section 8 Moderate Rehabilitation

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, for the reasons stated in the preamble, title 24 of the CFR is amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. In § 5.701, paragraphs (a) and (b) are revised to read as follows:

§ 5.701 Applicability.

(a) This subpart applies to housing assisted under the HUD programs listed in 24 CFR 200.853(a).

(b) This subpart applies to housing with mortgages insured or held by HUD, or housing that is receiving assistance from HUD, under the programs listed in 24 CFR 200.853(b).

* * * * *

3. Section 5.705 is revised to read as follows:

§ 5.705 Uniform physical inspection requirements.

Any entity responsible for conducting a physical inspection of HUD housing, to determine compliance with this subpart, must inspect such HUD housing annually in accordance with HUD-prescribed physical inspection procedures. The inspection must be conducted annually unless the program regulations governing the housing provide otherwise or unless HUD has provided otherwise by notice.

PART 200—INTRODUCTION TO FHA PROGRAMS

4. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715–18; 42 U.S.C. 2535(d).

5. A new subpart P is added to 24 CFR part 200 to read as follows:

Subpart P—Physical Condition of Multifamily Properties

Sec.
200.850 Purpose.
200.853 Applicability.
200.855 Physical condition standards and physical inspection requirements.
200.857 Administrative process for scoring and ranking the physical condition of multifamily housing properties.

Subpart P—Physical Condition of Multifamily Properties

§ 200.850 Purpose.

The purpose of this subpart is to establish the physical conditions standards and physical inspection requirements that are applicable to certain multifamily housing properties.

§ 200.853 Applicability.

This subpart applies to:

(a) Housing assisted by HUD under the following programs:

(1) All Section 8 project-based assistance. ''Project-based assistance'' means Section 8 assistance that is attached to the structure (see 24 CFR 982.1(b)(1) regarding the distinction between ''project-based'' and ''tenant-based'' assistance);

(2) Section 202 Program of Supportive Housing for the Elderly (Capital Advances);

(3) Section 811 Program of Supportive Housing for Persons with Disabilities (Capital Advances); and

(4) Section 202 loan program for projects for the elderly and handicapped (including 202/8 projects and 202/162 projects).

(b) Housing with mortgages insured or held by HUD, or housing that is receiving insurance from HUD, under the following authorities:

(1) Section 207 of the National Housing Act (NHA) (12 U.S.C. 1701 *et seq.*) (Rental Housing Insurance);

(2) Section 213 of the NHA (Cooperative Housing Insurance);

(3) Section 220 of the NHA (Rehabilitation and Neighborhood Conservation Housing Insurance);

(4) Section 221(d)(3) of the NHA (Market Interest Rate (MIR) Program);

(5) Section 221(d)(3) and (5) of the NHA (Below Market Interest Rate (BMIR) Program);

(6) Section 221(d)(4) of the NHA (Housing for Moderate Income and Displaced Families);

(7) Section 231 of the NHA (Housing for Elderly Persons);

(8) Section 232 of the NHA (Mortgage Insurance for Nursing Homes, Intermediate Care Facilities, Assisted Living Facilities, Board and Care Homes);

(9) Section 234(d) of the NHA (Rental) (Mortgage Insurance for Condominiums);

(10) Section 236 of the NHA (Rental and Cooperative Housing for Lower Income Families);

(11) Section 241 of the NHA (Supplemental Loans for Multifamily Projects). (Where, however, the primary mortgage of a Section 241 property is insured or assisted by HUD under a program covered in this part, the coverage by two HUD programs does not trigger two inspections); and

(12) Section 542(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 1707 note) (Housing Finance Agency Risk Sharing Program).

§ 200.855 Physical condition standards and physical inspection requirements.

(a) *Applicable standards and requirements.* The physical condition standards and physical inspection requirements in 24 CFR part 5, subpart G, are applicable to the properties assisted or insured that are listed in § 200.853.

(b) *Entity responsible for inspection of property.* The regulations that govern the programs listed in § 200.853, or regulatory agreements or contracts, identify the entity responsible for conducting the physical inspection of the property which is HUD, the lender or the owner. For properties with more than one HUD insured loan, only the first mortgage lender is required to conduct the physical inspection. The second mortgage lender will be provided a copy of the physical inspection report by the first mortgage lender.

(c) *Timing of inspections.* (1) For a property subject to an annual inspection under this subpart, the inspection shall be conducted no earlier than 9 months and no later than 15 months from the date of the last required inspection. In no event, however, shall the physical inspection be conducted after the end of the calendar year following the one year anniversary date of the last required inspection.

(2) For a property subject to an inspection every two years under this subpart, the inspection shall be conducted no earlier than 21 months and no later than 27 months from the date of the last required inspection. In no event, however, shall the physical inspection be conducted after the end of the calendar year following the two year anniversary date of the last required inspection.

(3) For a property subject to an inspection every three years under this subpart, the inspection shall be conducted no earlier than 33 months and no later than 39 months from the date of the last required inspection. In no event, however, shall the physical inspection be conducted after the end of the calendar year following the three year anniversary date of the last required inspection.

(4) For a newly endorsed multifamily property, the first inspection required under this subpart will be conducted no earlier than 21 months but not later than 27 months from the date of final endorsement. In no event, however, shall the inspection be conducted after the end of the calendar year following the two year anniversary date of final endorsement.

§ 200.857 Administrative process for scoring and ranking the physical condition of multifamily housing properties.

(a) *Scoring and ranking of the physical condition of multifamily housing properties.* (1) HUD's Real Estate Assessment Center (REAC) will score and rank the physical condition of certain multifamily housing insured properties listed in § 200.853 in accordance with the procedures described in this section. The physical condition inspection of the property, upon which REAC bases its score and ranking, is conducted by the responsible entity in accordance with § 200.855.

(2) Depending upon the results of its physical condition inspection, a multifamily housing property will be assigned one of three designations—standard 1 performing, standard 2 performing and standard 3 performing—in accordance with the ranking process described in paragraph (b) of this section.

(b) *Methodology for Ranking.* (1) Multifamily housing properties will be ranked in accordance with the methodology provided in this paragraph (b). Multifamily housing properties are scored on the basis of a 100 point scale. Because scores may include fractions, a score that includes a fraction below one half point will be rounded to the next lower full point and a score that includes a fraction of one half point or higher will be rounded to the next higher full point (*e.g.,* 89.4 will be rounded to 89, 89.5 will be rounded to 90).

(i) *Standard 1 Performing Property.* If a property receives a score of 90 points or higher on its physical condition inspection, the property will be designated a standard 1 performing property. Properties designated as standard 1 performing properties will be required to undergo a physical inspection once every three (3) years.

(ii) *Standard 2 Performing Property.* If a property receives a score of 80 points or higher but less than 90 on its physical condition inspection, the property will be designated a standard 2 performing property. Properties designated as standard 2 performing properties will be required to undergo a physical inspection once every two (2) years.

(iii) *Standard 3 Performing Property.* If a property receives a score of less than 80 points, the property will be designated a standard 3 performing property. Properties designated as standard 3 performing properties will continue to undergo an annual physical inspection as currently required under covered HUD programs.

(2) Owners of multifamily housing properties scoring in a standard 1 or standard 2 range which have been cited by the REAC as having a Exigent Health and Safety (EHS) deficiency(s) must resolve the deficiency(s), as required by paragraph (c)(2) of this section, to be

classified as standard 1 and standard 2 properties.

(3) Regardless of the performance designation assigned to an owner's property, an owner is obligated to maintain its property in accordance with HUD's uniform physical condition standards as required by 24 CFR part 5, subpart G, the Regulatory Agreement and/or the Housing Assistance Payment (HAP) Contract. Good management principles require an owner to conduct routine inspections of its projects, develop improvement plans, and again, maintain its property to meet the standard of decent, safe, sanitary and in good repair.

(c) *Owner's review of physical inspection report and identification of objectively verifiable and material error.* (1) Upon completion of a physical inspection of a multifamily housing property, the REAC will provide the owner or owner's representative, on the date of the physical inspection, notice of any items classified as EHS deficiencies. REAC also will provide the owner with the entire physical inspection report (electronically through the internet or by mail approximately 10 working days from the date of the report), which provides the physical inspection results and other information relevant to the inspection, including any items classified as EHS deficiencies and already provided to the owner, on the date of the inspection (EHS deficiencies are relayed by the inspector on the date of the inspection).

(2) The owner must carefully review the physical inspection report, particularly those items classified as EHS. The owner is also responsible for conducting its own survey of the total project based on the REAC's physical inspection findings. The owner must mitigate all EHS items immediately, and the owner must file a written report with the applicable Multifamily Hub Director within 3 business days of the date of the inspection, which is the date the owner was provided with the EHS notice. The report filed by the owner must provide a certification and reasonable evidence that the EHS items have been resolved.

(3) If, following review of the physical inspection results and score, the owner reasonably believes that an objectively verifiable and material error (or errors) occurred in the inspection, which, if corrected, will result in a significant improvement in the property's overall score (''significant improvement'' is defined in paragraph (d)(4) of this section), the owner may request a technical review within the following period, as applicable:

(i) 15 calendar days from the date the owner receives the physical condition score from REAC if the results and score are electronically transmitted via the Internet to the owner; or

(ii) 30 calendar days from the date the owner receives the physical condition score from REAC if the results and score are transmitted to the owner by hard copy by certified mail.

(d) *Technical review of physical inspection results.* A request for a technical review of physical inspection results must be submitted in writing to the Director of the Real Estate Assessment Center and must be received by the REAC no later than the 15th calendar day or 30th calendar day, as applicable under paragraph (c)(3) of this section, following submission of the physical inspection report to the owner as provided in paragraph (c)(1) of this section.

(1) *Request for technical review.* The request must be accompanied by the owner's reasonable evidence that an objectively verifiable and material error (or errors) occurred which if corrected will result in a significant improvement in the overall score of the owner's property. A technical review of physical inspection results will not be conducted based on conditions that were corrected subsequent to the inspection. Upon receipt of this request from the owner, the REAC will review the physical inspection and the owner's evidence. If the REAC's review determines that an objectively verifiable and material error (or errors) has been documented and that it is likely to result in a significant improvement in the property's overall score, the REAC will take one or a combination of the following actions: undertake a new inspection; correct the original inspection; or issue a new physical condition score.

(2) *Burden of proof that error occurred rests with owner.* The burden of proof rests with the owner to demonstrate that an objectively verifiable and material error (or errors) occurred in the REAC's inspection through submission of evidence, which if corrected will result in a significant improvement in the property's overall score. To support its request for a technical review of the physical inspection results, the owner may submit photographic evidence, written material from an objective source such as a local fire marshal or building code official, or other similar evidence.

(3) *Material errors.* An objectively verifiable material error must be present to allow for a technical review of physical inspection results. Material errors are those that exhibit specific characteristics and meet specific thresholds. The three types of material errors are as follows.

(i) *Building data error.* A building data error occurs if the inspection includes the wrong building or a building that was not owned by the property, including common or site areas that were not a part of the property. Incorrect building data that does not affect the score, such as the address, building name, year built, etc., would not be considered material, but is of great interest to HUD and will be corrected upon notice to the REAC.

(ii) *Unit count error.* A unit count error occurs if the total number of units considered in scoring is incorrect. Since scoring uses total units, the REAC will examine instances where the participant can provide evidence that the total units used is incorrect.

(iii) *A non-existent deficiency error.* A non-existent deficiency error occurs if the inspection cites a deficiency that does not exist.

(4) *Significant improvement.* Significant improvement refers to the correction of a material error, asserted by the owner, which causes the score for the owner's property to cross an administratively significant threshold (for example, the property would be redesignated from standard 3 performing to standard 2 performing or from standard 2 performing to standard 1 performing), or to result in an increase of 10 points or more.

(5) *Determining whether material error occurred and what action is warranted.* Upon receipt of the owner's request for technical review of a property's physical inspection results, the REAC will evaluate the owner's property file and the evidence provided by the owner that an objectively verifiable and material error occurred which, if corrected, would result in a significant improvement in the property's overall score. If the REAC's evaluation determines that an objectively verifiable and material error (or errors) has been reasonably documented by the owner and if corrected would result in a significant improvement in the property's overall score, then the REAC shall take one or a combination of the following actions:

(i) Undertake a new inspection;

(ii) Correct the inspection report; or

(iii) Issue a new physical condition score.

(6) *Responsibility for the cost of a new inspection.* If a new inspection is undertaken by the REAC and the new inspection score results in a significant improvement in the property's overall score, then HUD shall bear the expense of the new inspection. If no significant improvement occurs, then the owner

must bear the expense of the new inspection. The inspection cost of a new inspection, if paid by the owner, is not a valid project operating expense. The new inspection score will be considered the final score.

(e) *Adjustment of physical condition score based on considerations other than technical review and reinspection.* (1) Under certain circumstances, HUD may find it appropriate to review the results of a physical inspection which are anomalous or have an incorrect result due to facts and circumstances affecting the inspected property which are not reflected in the inspection or reflected inappropriately in the inspection. These circumstances include, but are not necessarily limited to, inconsistencies between local code requirements and the HUD physical inspection protocol; conditions which are permitted by variance or license or which are preexisting physical features non-conformities and are inconsistent with the HUD physical condition protocol; or cases where the owner has been scored for elements (*e.g.*, roads, sidewalks, mail boxes, resident owned appliances, etc.) that it does not own and is not responsible for maintaining.

(2) To seek a score adjustment on the basis of these circumstances as provided in paragraph (e) of this section, the owner must submit a request for an adjustment to REAC with appropriate proof of the circumstances that resulted in the incorrect physical conditions results. This process may result in a reinspection and/or rescoring of the inspection after review and approval of the owner's submission of appropriate proof of the anomalous or inappropriate application.

(3) An owner may submit the request for this adjustment to REAC either prior to or after the physical inspection has been concluded. If the owner submits a request for adjustment after the physical inspection has been concluded, the owner must submit its request to REAC within 45 days following the submission of the physical inspection report, as provided in paragraph (c)(1) of this section. HUD may, but is not required to review a request made after this period has expired.

(4) This adjustment process, provided in this paragraph (g), may result in a reinspection and/or rescoring of the inspection after review and approval of the owner's submission of appropriate proof of the anomalous or inappropriate application.

(f) *Issuance of final score and publication of score.* (1) The physical condition score of the property is the final score if the owner files no request for technical review, as provided in paragraph (c) of this section, or for other adjustment of the physical condition score, as provided in paragraph (e) of this section. If the owner files a request for technical review or score adjustments in accordance with paragraphs (c) and (e) of this section, the final physical condition score is the score issued by HUD after any adjustments are determined necessary and made by HUD at the conclusion of these processes.

(2) HUD will make public the final scores of the owners through posting on HUD's internet site, or through **Federal Register** publication or other appropriate means.

(g) *Owner's responsibility to notify residents of inspection; and availability of documents to residents.*

(1) *Notification to residents.* An owner must notify its residents of any planned physical inspections of their units or the housing development generally.

(2) *Availability of documents for review.* Once the technical review and database adjustment periods have expired, as provided in paragraphs (d) and (e) of this section, respectively, the owner must make its physical inspection report and all related documents available to its residents during regular business hours upon reasonable request for review and copying. Related documents include the owner's survey plan, plan of correction, certification and related correspondence.

(i) Once the owner's final physical condition score is issued and published, the owner must make any additional information, such as the results of any reinspection, appeal requests, available for review and copying by its residents upon reasonable request during regular business hours.

(ii) The owner must maintain the documents related to the physical inspection of the property, as described in this paragraph (g)(2), available for review by residents for a period of 60 days from the date of submission to the owner of the physical condition score for the property in which the residents reside.

(3) The owner must post a notice to the residents in the owner's management office and on any bulletin boards in all common areas that advises residents of the availability of the materials described in paragraphs (g)(2) of this section. The notice should include the name, address and telephone number of the HUD Project Manager.

(4) Residents are encouraged to comment on this information provided by the owners and submit any comments directly to the applicable Field Office. Should residents discover the owner provided HUD with a false certification during the review they are encouraged to notify the Hub or Program Center where appropriate inquiry and action will be taken.

(h) *Administrative review of properties.* The file of a multifamily property that receives a score of 30 points or less on its physical condition inspection will be referred to HUD's Departmental Enforcement Center (DEC) for evaluation. The files of any of the multifamily housing properties may be submitted to the DEC or to the appropriate HUD Multifamily Hub Director (MFD) for evaluation, or both, at the discretion of the Office of Housing.

(1) *Notification to owner of submission of property file to the MFD and DEC.* The Department will provide for notification to the owner that the file on the owner's property is being submitted to the MFD and/or the DEC for evaluation. The notification will be provided at the time the REAC issues the physical inspection report to the owner or at such other time as a referral occurs.

(2) *30–Day period for owner to provide the DEC with supporting and relevant information and documentation.* The owner has 30 calendar days, from the date of the REAC notification to the owner, to provide comments, proposals, or any other information to the DEC which will assist the MFD and DEC in conducting a comprehensive evaluation of the property. A proposal provided by an owner may include the owner's plan to correct deficiencies (corrective action plan). During the 30-day response time available to the owner, the DEC may encourage the owner to submit a corrective action plan. The corrective action plan, if timely submitted during the 30-day period (whether on the owner's initiative or at the request of the DEC), may serve as additional information for the DEC to consider in determining appropriate action to take at the conclusion of the evaluation period. If not submitted during the 30-day response time, a corrective action plan may be required of the owner at the conclusion of the DEC's evaluation of the property.

(3) *Evaluation of the property.* During the evaluation period, the DEC will perform an analysis of the multifamily housing property, which may include input from tenants, HUD multifamily officials, elected officials, and others as may be appropriate. Although the MFD will assist with the evaluation, for insured mortgages, the DEC will have

primary responsibility for the conclusion of the evaluation of the property after taking into consideration the input of interested parties as described in this paragraph (h)(2). The DEC's evaluation may include a site visit to the owner's property.

(4) *Continuing responsibilities of HUD Multifamily Program Offices and Mortgagee.* During the period of DEC evaluation, HUD's multifamily program offices continue to be responsible for routine asset management tasks on properties and all servicing actions (*e.g.*, rent increase decisions, releases from reserve account approvals). In addition, during this period of evaluation, the mortgagee shall continue to carry out its duties and responsibilities with respect to the mortgage.

(i) *Enforcement action.* If, at the conclusion of the evaluation period, the DEC determines that enforcement action is appropriate, the DEC will provide notification to the owner of the DEC's decision to formally accept the property for enforcement purposes.

(1) *DEC Owner Compliance Plan.* (i) After notification to the owner of the DEC's decision, the DEC will produce a proposed action plan (DEC Compliance Plan), the purpose of which is to improve the physical condition of the owner's property, and correct any other known violations by the owner of its legal obligations. The DEC Compliance Plan will describe:

(A) The actions that will be required of the owner to correct, mitigate or eliminate identified property deficiencies, problems, hazards, and/or correct any other known violations by the owner;

(B) The period of time within which these actions must be completed; and

(C) The compliance responsibilities of the owner.

(ii) The DEC Compliance Plan will be submitted to the MFD for review and concurrence. If the MFD does not concur, the DEC Compliance Plan will be submitted to the Deputy Assistant Secretary for Housing and the Deputy Director of the DEC for review and concurrence. If the DEC Compliance Plan remains unapproved, a final decision on the plan will be made by HUD's Deputy Secretary in consultation with the General Counsel, the Assistant Secretary for Housing, and the Director of the DEC.

(iii) Following submission of the DEC Compliance Plan to the owner, the owner will be provided a period of 30 calendar days to review and accept the DEC Compliance Plan. If the owner agrees to comply with the DEC Compliance Plan, the plan will be forwarded to the appropriate Multifamily Office for implementation and monitoring of completion of the plan's requirements.

(2) *Counter compliance plan proposal by owner.* The owner may submit an acceptable counter proposal to the DEC Compliance Plan. An owner's counter proposal to a DEC Compliance Plan must be submitted no later than the 30th day following submission of the DEC Compliance Plan to the owner. The DEC, in coordination with the MFD, may enter into discussions with the owner to achieve agreement to a revised DEC Compliance Plan. If the owner and the DEC agree on a revised DEC Compliance Plan, the revised plan will be forwarded to the appropriate Multifamily Office for implementation and monitoring of completion of the plan's requirements.

(3) *Non-cooperation and Non-compliance by owner.* If at the conclusion of the 30th calendar day following submission of the DEC Compliance Plan to the owner, the DEC receives no response from the owner, or the owner refuses to accept the DEC Compliance Plan, or to present a counter compliance plan proposal, or if the owner accepts the DEC Compliance Plan or revised DEC Compliance Plan, but refuses to take the actions required of the owner in the plan, the DEC may take appropriate enforcement action.

(4) *No limitation on existing enforcement authority.* The administrative process provided in this section does not prohibit the Office of Housing, the DEC, or HUD generally, to take whatever action may be necessary when necessary (notwithstanding the commencement of this process), as authorized under existing statutes, regulations, contracts or other documents, to protect HUD's financial interests in multifamily properties and to protect the residents of these properties.

(j) *Limitations on material alteration of physical inspection software.* HUD will not materially alter the physical inspection requirements in a manner which would materially increase the cost of performing the inspection.

Dated: December 4, 2000.

William C. Apgar,

Assistant Secretary for Housing—Federal Housing Commissioner.

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 8, 2000

AGRICULTURE DEPARTMENT
Rural Utilities Service
Seismic safety; published 12-8-00

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Aerospace manufacturing and rework facilities; published 12-8-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
Moxidectin; published 12-8-00
Medical devices:
Gastroenterology and urology devices—
Barium enema retention catheters and tips with or without bag; published 12-8-00

VETERANS AFFAIRS DEPARTMENT
Outer burial receptacles; monetary allowances; published 12-8-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cherries (sweet) grown in—
Washington; comments due by 12-11-00; published 11-9-00
Onions (sweet) grown in—
Washington and Oregon; comments due by 12-15-00; published 10-16-00
Oranges, grapefruit, tangerines, and tangelos grown in—
Florida; comments due by 12-11-00; published 10-10-00

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Citrus canker; comments due by 12-15-00; published 10-16-00

AGRICULTURE DEPARTMENT
Food and Nutrition Service
Child nutrition programs:
Child and adult care food program—
Management and program integrity improvement; comments due by 12-11-00; published 9-12-00

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
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Atlantic migratory species—
Atlantic bluefin tuna; comments due by 12-14-00; published 11-17-00
Ocean and coastal resource management:
Marine sanctuaries—
Commercial submarine cables; installation and maintenance; comments due by 12-11-00; published 11-24-00

DEFENSE DEPARTMENT
Defense Logistics Agency
Privacy Act; implementation; comments due by 12-12-00; published 10-13-00

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Multiple-award contracts competition; comments due by 12-14-00; published 12-15-99
Veterans Entrepreneurship and Small Business Development Act of 1999; implementation; comments due by 12-11-00; published 10-11-00

ENVIRONMENTAL PROTECTION AGENCY
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
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Missouri; comments due by 12-15-00; published 11-15-00
Air quality implementation plans; approval and promulgation; various States:
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Illinois; comments due by 12-11-00; published 12-1-00
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National oil and hazardous substances contingency plan—
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National priorities list update; comments due by 12-11-00; published 11-9-00

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Georgia; comments due by 12-11-00; published 11-8-00

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Veterans Entrepreneurship and Small Business Development Act of 1999; implementation; comments due by 12-11-00; published 10-11-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
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Durable medical equipment, prosthetics, othotics, and supplies; supplier standards; comments due by 12-11-00; published 10-11-00

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Bay checkerspot butterfly; comments due by 12-15-00; published 10-16-00
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Mountain yellow-legged frog; comments due by 12-11-00; published 10-12-00
Yosemite toad; comments due by 12-11-00; published 10-12-00
Recovery plans—
Red-cockaded woodpecker; comments due by 12-13-00; published 10-17-00

LABOR DEPARTMENT
Federal Contract Compliance Programs Office
Affirmative action and nondiscrimination obligations of contractors and subcontractors:
Compliance evaluations; comments due by 12-11-00; published 10-12-00

LABOR DEPARTMENT
Occupational Safety and Health Administration
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New Jersey; comments due by 12-13-00; published 11-13-00

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
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Alcohol, Tobacco and Firearms Bureau

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VETERANS AFFAIRS DEPARTMENT

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Post-traumatic stress disorder claims based on personal assault; comments due by 12-15-00; published 10-16-00

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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. 2941/P.L. 106–538

To establish the Las Cienegas National Conservation Area in the State of Arizona. (Dec. 6, 2000; 114 Stat. 2563)

Last List December 7, 2000

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